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NOT-FOR-PROFIT INCORPORATOR'S HANDBOOK



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This Handbook
has been prepared jointly by
the Companies Branch of the Ministry of Consumer and Commercial Relations
and the Office of the Public Guardian and Trustee for Ontario, Charitable Property Division

**The Mailing Address of
the Companies Branch is:**

Companies Branch
Ministry of Consumer and Commercial Relations
393 University Avenue, Suite 200
Toronto, Ontario
M5G 2M2

**The Mailing Address of
The Public Guardian and Trustee is:**

Office of the Public Guardian and Trustee
Charitable Property Division
Suite 800, 595 Bay Street
Toronto, Ontario
M5G 2M6



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PART 1 ■ GENERAL INFORMATION

Introduction

- 1.1** The purpose of this Handbook is to provide both the layman and the professional with some general information on the nature of a not-for-profit corporation and guidelines on how to incorporate such a corporation. It is hoped that the information set out in the following pages will be useful to those unincorporated organizations that may wish to incorporate without the assistance of a lawyer and to those professionals in general practice who may wish to have a ready reference available on special types of corporations, such as charities.

All not-for-profit corporations are subject to the **Corporations Act** and the Regulations made thereunder. Incorporation of not-for-profit corporations is at the discretion of the Minister (or his delegate). Certain pertinent sections to the Act and the Regulations are included in this Handbook. The reader is, however, referred to the Act and the Regulations to examine those sections not set forth. A copy of the **Corporations Act** and Regulations may be purchased in person at:

Publications Ontario
880 Bay Street
Toronto, Ontario
M7A 1N8

For mail order service telephone (416) 326-5300 or toll free 1-800-668-9938.

This Handbook contains general statements concerning the requirements of the Act and Regulations which are intended to serve only as a general guide and not as a substitute for statute when dealing with specific problems. Also, reference to this Handbook should not be a substitute for consultation with a lawyer on legal considerations or an accountant on financial matters.

Nature of a Corporation

- 1.2** In law, a corporation is an artificial person or a legal entity having an independent existence, separate and distinct from that of its members. The corporation owns property in its own name, acquires rights, obligations and liabilities, enters into contracts and agreements and has the capacity to sue and be sued as would a natural person.

Thus, for example, a corporation may be insolvent while its individual members may be wealthy. As a separate legal entity a corporation is not affected by changes in its membership and its existence continues in perpetuity unless its members or the Government take steps to dissolve it.

A corporation is managed or governed by a board of directors which is elected by the members. Usually the board of directors, in turn, either elects or appoints officers such as secretary, treasurer, president etc. who are responsible for the actual operation of the corporation.

Neither the directors, officers nor members “own” the corporation nor do they have any right of ownership to any particular asset of the corporation and the corporation may not be operated for pecuniary gain of its members, directors or officers.

In certain circumstance, a not-for-profit corporation may engage in activities that are revenue producing and that produce a “profit”. Such activities must be incidental to the principal objects of the corporation and in furtherance of the principal objects. For example, a boys’ hockey club may hold a dance to raise funds for new uniforms for the team. If, after paying the expenses, the dance produces a “profit”, the monies belong to the club and are to be used for the benefit of the club i.e. to purchase new uniforms for its team.

Should you Incorporate?

1.3 The act of incorporation offers certain advantages to the incorporators and their successors but at the same time it also places certain responsibilities upon them. Accordingly, before proceeding with incorporation, the members of an unincorporated organization should give the matter serious consideration. In this regard you may wish to consult a lawyer who has experience in corporate matters and who, given all the facts, can advise you whether it would be to your advantage to incorporate.

It is not mandatory for a not-for-profit organization to incorporate. There are in existence hundreds, possibly even thousands, of unincorporated organizations in Ontario that are carrying on their activities without any hindrance. Unincorporated organizations do not have a legal separate existence apart from their members.

Advantages of Incorporation

As the corporation is a separate legal entity distinct from its members and has the capacity to own property, to sue and be sued, it affords limited liability protection to its members. This means that individual members are not personally liable in certain instances, for the corporation's debts and obligations.

The corporation is not affected by changes in its members, be it due to death or any other reason. Therefore, it is easier to enter into a number of transactions in the name of the corporation such as, banking, owning real estate or signing a lease or contract.

A majority of the members of the corporation have the power to bind the others by their acts.

Disadvantages of Incorporation

As the corporation is a creature of statute, it is subject to some supervision by the Government of Ontario and it must conduct its affairs in accordance with the applicable statutes. For example, the constitution or by-laws of the corporation, the election of directors and the calling of meetings of members are all governed by the **Corporations Act**. In addition, a corporation is required to report certain information on a regular basis to certain departments of the Government. Failure to comply with reporting or disclosure requirements could render the corporation and its directors and officers liable to certain penalties, the ultimate penalty being the cancellation of the charter and dissolution of the corporation.

Types of Corporations

- 1.4** Not-for-profit corporations are incorporated for the purpose of carrying on, without pecuniary gain, objects of a patriotic, charitable, philanthropic religious, professional, sporting or athletic character. In other words, not-for-profit corporations are engaged in activities that are of benefit to the community. They are incorporated under Part III of the **Corporations Act** as corporations without share capital.

Basically, there are five types of not-for-profit corporations:

- A.** General type - this would include such corporations as ratepayers' associations, business or trade associations, community organizations, etc.;
- B.** Sporting and athletic organizations;

-
- C.** Social clubs - these are corporations with objects in whole or in part of a social nature;
 - D.** Service clubs such as Rotary, Lions, Kiwanis and Optimist;
 - E.** Charities - these would include religious organizations and organizations that are engaged in carrying out certain good works that are of benefit to society. (See Part 6 in this Handbook)

One of the main differences between a charity and another type of not-for-profit corporation is that upon dissolution a charity is required to distribute its remaining assets to other charities, not to its members, whereas another type of not-for-profit corporation may (unless prohibited from so doing in its charter of by-laws) on dissolution distribute its remaining assets among its members. Also, a charitable corporation, because it usually solicits funds from the public and enjoys certain legal and tax advantages (e.g. under the **Federal Income Tax Act**) is subject to more stringent reporting requirements than a not-for-profit corporation of another type.

Incorporation Process and Corporate Maintenance

1.5 If a decision is made to incorporate you should take the following steps:

- | | |
|--------------------|---|
| FIRST STEP | Select the proposed corporate name (see Part 2 of this Handbook). |
| SECOND STEP | Prepare and file the application for incorporation (see Part 3 of this Handbook). |
| THIRD STEP | Following the receipt of the Letters Patent of incorporation, organize the corporation (Part 4 of this Handbook). |
| FOURTH STEP | The organization of a corporation is followed by an ongoing activity of “corporate maintenance”, that is, ensuring that the corporation complies with the reporting requirements and conducts its affairs in accordance with the applicable Acts and Regulations (see Part 5 of this Handbook). |

Self-help Remedies Available under the Corporations Act

1.6

The **Corporations Act** does not provide the Ministry with the authority to intervene and resolve internal disputes between members and its Board of Directors. It does provide members with various self-help remedies to ensure compliance with the Act.

You may wish to consult private legal counsel in determining the appropriate remedies available to you.

PART 2 ■ CORPORATE NAME

Name not to be Deceptively Similar

- 2.1** The Act (section 13(1)(a)) provides that a corporation shall not be given a name that is the same as or similar to the name of a known corporation, association, partnership, individual or business if the use of the proposed name would be likely to deceive, except where the existing corporation, association, etc. gives a consent in writing. In other words, the Act permits the granting of a similar corporate name so long as the proposed name is not **CONFUSINGLY** or **DECEPTIVELY SIMILAR** to an existing name.

Name to be Distinctive

- 2.2** Basically, to comply with the provisions of the Act, new corporate names must be “distinctive” - and this distinctiveness must survive certain media distortion as the corporation identifies itself to the various sectors of the public with which it interacts - including other corporations, its members, creditors, the general public and government agencies. In other words, a new corporate name must be such that it will not be confused with **EXISTING** names of corporations, trademarks or unincorporated organizations and will not **MISLEAD** or **CONFUSE** the public as to the undertaking or nature of the corporation or its relationship to other corporations.

Types of Distinctiveness

- 2.3** The name itself may be distinctive or may acquire its distinctiveness through long use.

Usually the most distinctive or unique names have a coined word as the distinctive element, for example:

- Avinta Social Club
- Zaltak Hockey Association
- 5-P Bowling Club

Unusual use or combination of generic words may produce a distinctive name, for example:

- All-That-Jazz Club
- Sorcerers Hockey Club
- Magic Eleven Soccer Club

Words that are coined using parts of other words, geographical location, numbers, initials and dictionary words make a less distinctive name.

- Sundance Social Club
- Kenora Hockey Association
- Loyal Order of Moose Lodge 35
- Guelph Dance Club
- Northern Lights Skating Club

Elements of A Corporate Name

2.4 Most corporate names consist of three elements:

1. The **DISTINCTIVE** element is the main identifier of the corporate name. It may be a coined word or a dictionary word used in a fanciful sense quite different from its ordinary meaning or a geographic term. Every corporate name must have a distinctive element.
2. The **DESCRIPTIVE** element describes the nature of the main corporate undertaking. Care should be taken not to use terms that may be misdescriptive or misleading.
3. The **LEGAL** element indicates the status of the organization as an incorporated body. Either "Corporation" or "Incorporated" or "Incorporée" or their abbreviations may be used. The use of this element is optional.

DISTINCTIVE ELEMENT	DESCRIPTIVE ELEMENT	LEGAL ELEMENT
Canvelo	Cycling Club	Inc.
Village Green	Square Dancers	
Don Mills	Student Exchange	Corp.

Name not to be too General

2.5 Regulation (section 5) provides that a corporate name shall not be too general. The reason for this prohibition is that corporate names that are too general

tend to infringe on a number of existing names, are likely to contribute to confusion and unduly restrict or limit the possibility of using names in the future that otherwise would be available to the public except for the existence of the name that is too general.

A corporate name that is too general may be defined as a name that usually lacks the distinctive element (see Item 2.4 Elements of a Corporate Name).

Example A: names that are too general consist of words of general meaning that have no distinctive element to them and for the purposes of a corporate name consist of only the descriptive and the legal element:

- Student Exchange Corporation
- Cycling Club Inc.
- Jazz Singers Friendship Society

Example B: a general name can be rectified by adding the distinctive element:

- Don Mills Student Exchange Corporation
- Canvelo Cycling Club Inc.
- Soundville Jazz Singers Friendship Society

Name not to Suggest Connection with the Crown

2.6 The Act (section 13(1)(b)) provides that a corporation shall not be given a name that suggests or implies connection with the Crown or the Royal Family.

The consent of the Secretary of State, Canada, has to be obtained by the applicant where the word “Royal” is used as a prefix in a corporate name and where it suggests Royal Patronage. The onus is on the applicant to obtain such consent. The address is:

Department of Canadian Heritage
Ottawa, Ontario
K1A 0M5

Example A: Corporation names that suggest Royal Patronage and need the consent of the Secretary of State, Canada:

- The Royal Agricultural Winter Fair
- The Royal Canadian Yacht Club
- The Prince Charles Youth Foundation

Example B: corporation names where “Royal” is used as a descriptive adjective in the use of “majestic” or “grand” and Royal Patronage is **not** suggested and therefore the consent of the Secretary of State, Canada, is **not required**:

- Royal Wave Surfing Association
- Royal Mountain Ski Club

Name not to Suggest Connection with Government

2.7 The Act (section 13(1)(b)) provides that a corporation shall not be given a name that suggests or implies connection with any government or a government department or agency without the written consent of the appropriate authority. In this connection particular attention should be given to the use of the words “Canada” and “Ontario”. The Federal Government departments are using names such as “Revenue Canada”, “Consumer and Corporate Affairs Canada” and care should be taken with proposed corporate names using this style.

Example A: names that **suggest** or **imply** government connection:

- Heritage Ontario
- Multi-Culture Canada
- Metro Toronto Sports and Recreation Authority

Example B: Names implying government connection may be modified by rearranging and adding words thus eliminating the suggested government connection:

- Heritage Association of Kingston, Ontario
- Canadian Multi-Cultural Society of Timmins
- Sports and Recreation Association of Metro Toronto

Use of the Name of Another Province

2.8 Certain other Provinces restrict the use of the name of their Province in a corporate name. Accordingly, where it is desired to use the name of another Province in a proposed corporate name, the incorporators must obtain the consent (in writing) of the Director, Corporations Branch or Registrar of Companies, as the case may be, of the Province in question. For addresses, please see **Appendix “B”**.

Languages Permitted in the Corporate Name

- 2.9** In Ontario the name for a not-for-profit corporation may be in any language, provided that only letters from the Roman alphabet or Arabic numerals or a combination thereof, together with such punctuation marks and other marks as are permitted by Regulation (O.Reg. 181/90 - section 8) are used. The English language is an example of a language which uses letters from the Roman alphabet.

Despite the above, the Act (section 22) provides that a not-for-profit corporation may have a special provision in its Letters Patent or supplementary Letters Patent allowing for the use of the approved corporate name in any form and any language. In other words, an exact translation of the corporate name into another language may be used. This is permitted, provided that such form and such language is clearly set out in the special provision.

Prohibited Words / Expressions

- 2.10** The Regulation prohibits the use of some words and expressions and restricts the use of others. Here is a summary of such prohibitions and restrictions:

Section 3 (1)

The following words and expressions shall not be used in a corporate name:

- 1.** “Amalgamated”, unless the corporation is an amalgamated corporation resulting from the amalgamation of two or more corporations.
- 2.** “College” “institute” or “university” except with a consent in writing on behalf of the Ministry of Education and Training.
- 3.** “Engineer” or “engineering” or any variation thereof, except with the consent in writing of the Association of Professional Engineers of the Province of Ontario.
- 4.** “Housing”, unless the corporation is owned by, sponsored by, or connected with the Government of Canada, the Government of Ontario, or a municipal government in Ontario.
- 5.** “Royal” where used a prefix, unless the consent of the Crown has been obtained through the Secretary of State, Canada.

-
6. Numerals indicating the year of incorporation, unless the proposed corporation is the successor to a corporation the name of which is the same as or similar to the proposed corporation, or, the year is the year of amalgamation of the corporation.
 7. Any word or expression that would lead to an inference that the corporation is a business corporation.

Section 6(1)

A corporate name shall not contain a word or expression, an element of which is the family name of a particular individual, who is living or who has died within the previous thirty years whether or not preceded by a given name or initials, unless the individual, his heir, executor, administrator, assigns or guardian consents in writing to the use of his name.

Section 7

A corporate name shall not contain any word or expression in any language that describes in a misleading manner the activities or services in association with which the corporate name is proposed to be used. (O. Reg. 181/90, s.7.).

For the full text the reader is referred to the official publication of the Regulations.

Choosing the Corporate Name

2.11 When choosing the corporate name, it is well to bear in mind the many and varied situations when and how the corporate name will be used. For example, the name may be used visually (stationery, signs, uniforms, cheques, correspondence, newsprint, advertising, etc.) and auditorially (telephone, radio, television). In each of these uses it would be to the advantage of the corporation to have a name that is memorable. To this end, the name should be distinctive and short.

Usually, a coined word or a dictionary word used in a fanciful sense quite different from its ordinary meaning can make a corporate name that is both distinctive and memorable. For example, “Canvelo Club” (for a cycling club) and “Magic Eleven Soccer Club” are likely to be memorable names that are easy to use visually and auditorially. As a rule of thumb, avoid using long, cumbersome names such as “Chirpsqueak Society of Friends of Non-Migratory Song Birds of South-Western Ontario”.

Using your imagination in coining the distinctive element and carefully searching the proposed corporate name will, in the long run, save you time and money. Accordingly, when your group decides to incorporate, the following steps are recommended for choosing a corporate name:

1. Get your group together for a “brainstorming” session and try to come up with a word or words that would make the proposed name unique. A coined word usually is very effective. Try to have a least three choices.
2. Check section 13 of the **Corporations Act** and the Ontario Regulations to ensure that the proposed name does not conflict with the Act or the Regulations. The Regulations prohibit the use of certain words and restrict the use of others. The Act and the Regulations should be available in the reference department of your local public library or they may be purchased from:

Publications Ontario
50 Grosvenor St,
Toronto, Ontario M7A 1N8 Telephone (416) 326-5300
or toll free 1-800-668-9938

3. After the initial choice has been made, check the proposed name against the names listed in the telephone directories, municipal directories, hobby or sports magazines, etc. Many of these publications should be available in your local public library. If your proposed name is confusingly similar to the name of an existing organization or corporation then abandon it and go to your second choice, third choice and so on, and if necessary, back to some more “brainstorming”.

Checklist

- 2.12** You may save time and expense by checking the proposed name against this check-list. Remember, Search Houses charge a fee for each search of the proposed name in the NUANS computer file. Accordingly, before requesting the required NUANS search report, use this check-list to satisfy yourself that the name you have chosen does not conflict with the Act and Regulations.

Is the proposed name:

1. PROHIBITED BY THE ACT OR REGULATIONS?
Section 13 of the Act and sections 3, 5, 6, 7, 8 and/or 9 of the Regulations

-
2. DISTINCTIVE?
 - (a) Too general?
Section 5 of the Regulations
items 2.4, 2.5 of this Handbook
 - (b) Only descriptive?
Item 2.4 of this Handbook
 - (c) Primarily only name or surname?
Sections 5 and 6 of the Regulations
 - (d) Primarily or only geographic name?
Section 5 of the Regulations
 3. Misdescriptive?
Section 7 of the Regulations
 4. DECEPTIVE / CONFUSING?
Section 13 of the Act

Check local telephone directories for identical or deceptively similar names.
Consider degree of similarity - appearance
 - sound
 - meaning

The Corporate Name Search Report

2.13 If the proposed name does not appear to be deceptively/confusingly similar to the name of an existing organization or corporation, and does not appear otherwise to contravene the Act or the Regulations then you should contact a Search House in order to obtain an Ontario biased name search report for the proposed name of the corporation.

A Search House is a private company that has access to the NUANS* computer data base of corporate names, trade marks and business names in use in Canada. The fees charged and services provided vary from Search House to Search House and there may be considerable difference in what you get for your money. Accordingly, it is wise to shop around and compare. The Search House will produce a computer printed name search report and will forward the report to you. The name search report is valid for 90 days. See **Appendix "C"** Search Houses.

*NUANS - "New Upgraded Automated Name Search" system owned by Industry Canada.

Warning - use of the Proposed Name

- 2.14** Do not complete the application for incorporation until you receive the name search report. The application must be accompanied by the original Ontario biased name search report. **Do not** print any stationery, or order a corporate seal or enter into any transactions using the corporate name until the Letters Patent incorporating the corporation are issued.

PART 3 ■ INCORPORATION

Pre-incorporation Considerations

3.1

At this point, you should consider whether the activities or undertaking of the proposed corporation may come under the supervision or regulation of, or be of interest to a Ministry or an Agency of the Government. In particular:

- Will the corporation seek financial assistance from the Government?
- Are the proposed activities of the corporation regulated by a Ministry or Agency of the Government?
- Will the corporation engage in activities that would supplement services provided by a Ministry or Agency of the Government?

If the answer to any one of the above questions is “yes”, then it may be wise to consult the appropriate Ministry or Agency prior to completing the application. Some Ministries or Agencies may require that you contact them prior to incorporation and some may also offer assistance in drafting objects for the proposed corporation.

Such consultation with the regulating bodies may, in the long run, save you time, inconvenience and expense.

For example:

- if the corporation is to operate a kindergarten or a nursery school, home for children or a day care service, you should consult the Ministry of Community and Social Services;
- if the corporation is to provide a home for the aged, you should consult both the Ministry of Community and Social Services, and the Ministry of Municipal Affairs and Housing;
- if the corporation is to provide cultural or citizenship programs you should consult the Ministry of Citizenship, Culture and Recreation;
- if the corporation is to provide education or training programs you should consult the Ministry of Education and Training;
- if the corporation is to be a charity, you should consult the Office of the Public Guardian and Trustee (Ontario) and Revenue Canada, Taxation; (see Part 6 of this Handbook).
- if the corporation is to provide health care services or to engage in related activities or if the corporation is to be an association of health care professionals, you should consult the Ministry of Health;

-
- if the corporation is to provide prisoner rehabilitation services you should consult the Ministry of the Solicitor General and Correctional Services.

Note: This is not an exhaustive list of instances where other Ministries are to be consulted.

Completion of Application - General Comments

3.2 The application must be in the form prescribed by the Regulations and may be obtained from:

Corporate Services Section
Companies Branch
Ministry of Consumer and Commercial Relations
393 University Avenue
Suite 200
Toronto, Ontario
M5G 2M2
Telephone (416) 314-8880 or toll free in Ontario 1-800-361-3223

Detailed instructions for completion accompany each set of application forms and those instructions are not repeated in the Handbook. The information in this Handbook is more general and is intended to clarify and supplement the instructions that are supplied with the application forms. (See **Appendix "A"** sample application for incorporation).

Head Office

3.3 Every corporation is required to have a head office in Ontario (section 277 of the Act). This does not necessarily mean that a corporation must own or lease a special building or a suite of offices. The intention of the Act is to have an address formally designated as the head office of the corporation where certain records are kept (section 304 of the Act) and where the corporation may be reached by an interested party. Some incorporators use their home address for this purpose and accordingly that address is set out in Item 2 of the application for incorporation.

Directors

3.4 The first directors, not fewer than three (section 283 of the Act) individuals

named as directors in the Letters Patent, are the directors of the corporation until replaced by other individuals duly elected in their stead (section 284 of the Act). The first directors of the corporation have all the powers, duties and liabilities of directors that are elected to the board.

The office of director is not only an office that accords prestige to the person who holds it, it also places on that person responsibilities and even liabilities. Accordingly, any person accepting a directorship should be prepared to assume the responsibilities that go with the director's office.

Objects - General

3.5 Definition of Objects

Objects are a concise statement of the ultimate purpose of the corporation from which flow the powers of the corporation.

Content of Objects

The principal objects, that is objects which describe the primary undertaking of the corporation, should be the first statement, followed by secondary objects, if any.

The objects should not be an enumeration of the proposed activities and/or the aims of the corporation. It is advisable to keep the objects statement short but broad in nature, (except for charities, see Part 6 of this Handbook), since a general object will include the particulars normally included in that sort of undertaking. On the other hand, the objects should be sufficiently specific so as to avoid ambiguity.

Examples: the objects for a community youth organization might be drafted as follows:

- The establishment and operation of a youth organization for the purpose of:
 - a) promoting the best interests of teenagers in the Town of Kenora;
 - b) promoting interest in athletics, sports and recreation and establishing and maintaining facilities and equipment for same.and other complementary purposes not inconsistent with these objectives.
- The objects of a ratepayers' association might be drafted as follows:
The establishment and operation of a residents' association for the purposes of

-
- a) fostering and advancing the interests of the residents of the community of Central Don Mills;
 - b) carrying on research and investigation into problems connected with ownership and development of real property in the community.
- The objects of a social club, with premises, might be drafted as follows:
The establishment and operation of a social club for the purpose of
- a) promoting social and recreational activities among the members of the corporation;
 - b) providing recreational facilities and a club house for the accommodation of members of the corporation and their guests.

SEE APPENDIX “D” Draft Standard Clauses for Non-profit non-charitable, non-regulated corporations under Part III of the **Corporations Act**.

Note: Clause 4 of the application must contain objects only and **not** powers or special provisions.

Objects - Charities

3.6 See Part 6. of this Handbook.

Ancillary Powers

3.7 All corporations automatically acquire ancillary or supplementary powers (section 23 (1)(a) to (p) and (s) to (v) of the Act), unless withheld in the Letters Patent or Supplementary Letters Patent. Ancillary powers, if any, should be included in clause 5 of the application under Special Provisions.

Special Provisions

3.8 The applicants may ask to have embodied in the Letters Patent any provision that may be made the subject of a by-law of the corporation (section 119(2) of the Act). However, this may not be desirable in most circumstances as subsequent changes to such provisions may be effected by Supplementary Letters Patent only. The contents of the by-laws of the corporation are governed by sections 129 and 130 of the **Corporations Act**.

Some items that may be included in the special provisions section are:

- (i) Borrowing powers (see wording in section 59)
- (ii) Distribution of assets
- (iii) Directors: terms / remuneration
- (iv) Membership qualification
- (v) French or foreign version of name
- (vi) Other powers

Supporting Documents

3.9 In certain circumstances an application for incorporation must be accompanied by certain supporting documents. For example, if at the time of making the application there exists an unincorporated organization, a “Consent and Undertaking” (see **Appendix “E”**) is required; or if it is desired to incorporate a service club, such as Civitans, Kiwanis, Knights of Columbus, Lions, Rotary, etc. a consent from the “parent” organization must be obtained and enclosed with the application.

Checklist

- 3.10**
- a) Have you fully completed **all** items in the application and, if not applicable, so stated?
 - b) Have you enclosed with the application
 - the original of the Ontario biased NUANS Name Search Report?
 - a cheque for the appropriate amount made payable to the Minister of Finance?
 - the appropriate supporting documents, if required?

Timing

3.11 An application for incorporation is usually processed within approximately 8 weeks of receipt in the Branch. The Letters Patent will bear the effective date as of the date of delivery unless the application is returned for revision, in which case Letters Patent will bear an effective date as of the date of redelivery to the Companies Branch, provided the application is correct.

PART 4 ■ ORGANIZATION AND START UP

Organization and Start Up

4.1 Once the corporation has received its Letters Patent, a number of essential steps are required to be initiated so that the directors may properly administer the affairs of the corporation. Among these steps are:

- establishing directors' quorum
- adoption of by-laws
- banking and financial arrangements
- adoption of corporate seal
- appointment of auditors
- appointment of officers

It may be advisable to retain the services of a lawyer who specializes in corporation law to ensure the corporation is properly organized and the directors understand their responsibilities. By having the corporation properly organized, you should eliminate a number of potentially serious problems in the future.

Should you decide to proceed with the organization of your corporation without the assistance of a lawyer, you should refer to the:

- **Corporations Act**
- **Corporations Information Act**

which may be purchased by mail order from:

Publications Ontario

50 Grosvenor St.

Toronto, Ontario

M7A 1N8

Telephone (416) 326-5300 or toll free 1-800-668-9938

For Personal Shopping call (416) 326-5324

In addition, detailed procedural information and precedents may be found in the:

- Ontario Corporation Manual;
- Ontario Corporations Law Guide; and
- Canadian Corporate Secretary's Guide.

Theses are private publications and are usually available in the reference department of most public libraries.

Initial Reporting Requirements

4.2 Within 60 days of incorporation you are required to file an Initial Return (see section 2 of the **Corporations Information Act**) with the:

Corporate Notices Section
Companies Branch
Ministry of Consumer and Commercial Relations
393 University Avenue
Suite 200
Toronto, Ontario
M5G 2M2
Telephone (416) 314-8880 or toll free in Ontario 1-800-361-3223

Subsequently, **within 15 days** after every change that takes place in the information set out in the Initial Return, you must file a Notice of Change (section 4 of the **Corporations Information Act**) at the address above.

There is no fee for filing the Initial Return or the Notice of Change. The appropriate form is supplied to you at the time of incorporation. Additional forms may be obtained at the address above.

Note: Failure to file the Initial Return within the prescribed period of time may attract penalties for the corporation as well as for the directors and officers. Under the **Corporations Information Act**, upon conviction, each director and officer is liable to fines of up to \$2,000 and the corporation may be fined up to \$25,000. In addition, the charter (Letters Patent) of the corporation may be cancelled and the corporation dissolved.

PART 5 ■ CORPORATE MAINTENANCE

Annual Meeting

- 5.1** An annual meeting must be held not later than eighteen months after incorporation and subsequently not more than fifteen months after the holding of the last annual meeting. (s. 293)

Election of Directors and Officers

- 5.2** Usually the directors are elected annually at the general meeting by the members of the corporation. Directors in office at the time are retired and, if eligible, may seek re-election to resume office for another year. (s. 287(1)(2)).

Generally directors are elected by members, and officers are appointed by the board of directors.

There are three exceptions:

- ex-officio directors (s. 127)
- election of directors in rotation (section 287 (5))
- division of members into territorial or common interest groups (s. 130)

Quorum for Meetings

- 5.3** The quorum for meetings of directors is a majority, unless otherwise provided for in the Letters Patent, Supplementary Letters Patent or in a special resolution of the corporation, and in any event shall not be less than two-fifths of the board of directors. (s. 288).

Reporting Requirements

- 5.4** Within 60 days of incorporation you are required to file an Initial Return (see section 2 of the **Corporations Information Act**) with the:

Corporate Notices Section

Companies Branch

Ministry of Consumer and Commercial Relations

393 University Avenue, Suite 200

Toronto, Ontario M5G 2M2

Telephone (416) 314-8880 or toll free in Ontario 1-800-361-3223

Notice of Change

Within 15 days after every change that takes place in the information set out in the Initial Return, (this includes every change in the board of directors, officers or their residential addresses or change in the corporation's address) you must file a Notice of Change (section 4 of the **Corporations Information Act**) at the address listed on the previous page.

There is no fee for filing the Initial Return or the Notice of Change. The appropriate form is supplied to you at the time of incorporation. Additional forms may be obtained from the Companies Branch.

Special Information Notice

Periodically special information notices under section 6 of the **Corporations Information Act** are mailed out to all Ontario non-profit corporations on record with the Companies Branch. When your corporation receives this document, it is essential that it be completed and returned to the Branch within thirty days. **The special information notice must be filed whether or not the corporation has recently filed an Initial Return or Notice of Change (Form 1 under the Corporations Information Act).** Failure to file the special information notice may result in cancellation of the charter and the dissolution of the corporation.

Penalties for Failure to Comply with Filing Requirements

- 5.5** The importance of submitting these filings cannot be over-emphasized. Failure to comply may lead to cancellation of the Letters Patent and dissolution of the corporation. Penalties are provided in the **Corporations Information Act** for individuals (up to \$2,000) and for corporations (up to \$25,000) where reporting requirements are not complied with. Also, a corporation that is in default of the reporting requirements is not capable of maintaining any action in any court in Ontario in respect of any contracts made by the corporation.

Additional Reporting Requirements

- 5.6** Where a corporation is regulated or funded by a Ministry or Agency of the Government, it may be required to comply with other reporting requirements in addition to those enumerated in the Handbook. For example, charities are required to submit certain reports to the Public Guardian and Trustee as well as to Revenue Canada, Taxation. (see Part 6 of this Handbook).

Audit Provisions

- 5.7** Members of the corporation must appoint an auditor to hold office until the first annual meeting and at each annual meeting must appoint one or more auditors to hold office until the next annual meeting. There is no waiving of this statutory requirement (s. 94 and 133).

Record Keeping Requirements

- 5.8** A not-for-profit corporation is required, among other things, to meet certain record keeping obligations such as:
- proper books of account and accounting records (s. 302)
 - minutes of meetings of members and directors (s. 299)
 - maintain copies of Letters Patent, Supplementary Letters Patent, By-Laws and Special Resolutions (s. 300)
 - register of its members and directors (s. 300)

Use of Corporate Name

- 5.9** The name of a corporation is set out in the instrument of incorporation (Letters Patent) or if subsequently changed, in the instrument of amendment (Supplementary Letters Patent) and that is the name that the corporation must use (for exception see paragraph 5.11) in all transactions.

For example, if the name of the corporation is *The Muskoka and Haliburton Naturalists Inc.*, it may **not** identify itself as *Muskoka and Haliburton Naturalists*.

Changing Corporate Name

- 5.10** A corporation may apply for Supplementary Letters Patent to change its corporate name. (see s. 131 of the Act and s. 19 of the Regulations).

Use of a Name Other than Corporate Name

- 5.11** A corporation may use a name other than its corporate name. For example, a corporation called Federation of Ontario Moose Callers may carry on its undertaking under the assumed name "Ontario Moose Callers".

However, NO corporation shall carry on business in Ontario or identify itself to the Ontario public by a name other than its corporate name unless the assumed name is first registered with the Companies Branch (section 2(1) of the

Business Names Act). The appropriate registration form, (Form 2, under the **Business Names Act**) may be obtained from:

Companies Branch
Ministry of Consumer and Commercial Relations
393 University Avenue
Suite 200
Toronto, Ontario
M5G 2M2
Telephone (416) 314-8880 or toll free in Ontario 1-800-361-3223

A corporation which has registered and uses a name other than its corporate name is required to set out its corporate name on all contracts, invoices, negotiable instruments and orders for goods and services. (Section 2 (6) of the **Business Names Act**).

Changing the Authorized Number of Directors

5.12 The number of directors of a corporation is established at the time of incorporation, being the number of first directors named in the Letters Patent.

The board of directors of a corporation shall consist of a **fixed** number of directors not fewer than three (s. 283(2) of the Act).

A corporation may by special resolution increase or decrease the number of its directors (s. 285 of the Act).

“Special Resolution” means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the corporation duly called for that purpose or in lieu of such confirmation by the consent in writing of all the members entitled to vote at such a meeting.

A notice of such special resolution (see **Appendix “F”**) **must be filed** with the Companies Branch (there is no fee for filing) and published by the corporation in the Ontario Gazette **within 14 days** after the resolution has been passed.

Changing the Location of the Head Office

5.13 The location of the head office is established in the Letters Patent. However, a corporation may by special resolution change the location of its head office to another place in Ontario (s. 277 of the Act).

“Special Resolution” means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the corporation duly called for that purpose or in lieu of such confirmation by the consent in writing of all the members entitled to vote at such a meeting.

A notice of such special resolution (see **Appendix “G”**) must be filed with the Companies Branch (there is no fee for filing) and published by the corporation in the Ontario Gazette **within 14 days** after the resolution has been passed.

Changing the Objects and Special Provisions

5.14 A corporation may apply for Supplementary Letters Patent to change all or any of its objects and/or special provisions set out in the Letters Patent (see s. 131 of the Act and section 19 of the Regulations).

If the corporation is, or after issuance of Supplementary Letters Patent, would be funded, supervised, etc. by a Government Agency or Ministry, it may be wise to consult with the funding or supervising Agency or Ministry prior to completing the application for Supplementary Letters Patent.

Applicants for Supplementary Letters Patent should also bear in mind that, in addition to the **Corporations Act**, there may be other legislation to which the corporation may be subject.

Income Tax Act Considerations

5.15 A non-profit or not-for-profit corporation is generally exempt from federal income tax either as a “non-profit organization” as described in paragraph 149(1)(l) of the **Federal Income Tax Act** or if registered as a charity within the meaning assigned under section 149.1.

Although an organization may not qualify for charitable status, the non-profit-non-charitable designation may still be advantageous from a federal income tax point of view. The following activities, in accordance with Section 149(1) of the **Income Tax Act** (Federal), qualify for exemption from tax on their income without being a charity.

Section of Income Tax Act	Possible Type Of Activity
Section 149(1)(e)	An agricultural organization, a Board of Trade, or a Chamber of Commerce.
Section 149(1)(i)	Certain housing corporations providing low-cost housing accommodation for the aged.
Section 149(1)(j)	Non-profit corporation for scientific research.
Section 149(1)(k)	A benevolent or fraternal benefit society or order, a labour organization or society.
Section 149(1)(l)	Amateur athletic organization, club, society, or association for social welfare, civic improvement, pleasure or recreation.
Section 149(1)(n)	Limited dividend housing company under the National Housing Act , constructing, holding, or managing low-rental housing project.

Incidentally, a non-profit, low-cost housing organization established exclusively for the aged, under Section 149(1)(i), can also obtain the ability to issue income tax receipts for donations in accordance with Section 118.1(1)(c) of the **Income Tax Act**, without being incorporated as a charity.

Ontario Corporations Tax Branch Requirements

5.16 Corporations, whether share or non-share, which are exempt from both income tax and capital tax, are not required to file annual Ontario Corporations Tax Returns (CT-23) with the Corporations Tax Branch.

Exempt corporations are defined for income tax purposes under section 57 of the **Ontario Corporations Tax Act** (the Act) and for capital tax purposes under section 71 of the Act and include:

- a) charities and other corporations - any corporation referred to in paragraph 149(1)(c), (d), (e), (f), (h.1), (i), (j), (k), (m), (n), (o), (o.1), (o.2), (o.3), or (t) of the **Income Tax Act (Canada)**. This list includes municipal corporations, certain Crown corporations, registered charities, certain housing corporations, non-profit corporations for

scientific research, labour organizations, limited dividend housing corporations, pension corporations, prescribed small business investment corporations and certain other non-profit organizations (boards of trade, agriculture organizations, chamber of commerce).

- b) Non-profit organizations - clubs, societies or associations that are organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose other than profit, and **have never** distributed their income, funds or property to benefit shareholders, members, etc. (with a small exception e.g. distributions whose primary purpose is ultimately the promotion of amateur athletics in Canada).
- c) Farmers and Fishermen insurers - an insurer who receives at least 25% of the gross premiums for insuring property used in farming or fishing or residences of farmers or fishers. The 25% test is confirmed by the Superintendent of Insurance. This provision exempts from income tax the Farmers Mutual Insurance Companies insuring farmers in Ontario.

Mutual insurance corporations receiving premiums wholly from the insurance of churches, schools or other charitable organizations are now required to file a return and pay a flat capital tax of \$100, only if their total assets and/or gross revenue are in excess of \$1 million.

This example shows a corporation which is exempt from income tax, is not necessarily guaranteed an exemption from capital tax; that exemption determination has to be done separately.

Where a corporation loses its exempt status for a particular taxation year it would be required to file a return and pay the taxes for that year. It would also be required to file for each subsequent year if:

- a) it had a taxable income for the year;
- b) its total assets and/or gross revenue exceed \$1 million.

For corporations which have not lost their exempt status, the Branch may require that these corporations complete questionnaires from time to time to see if their tax status has changed.

Dissolution - Surrender of the Charter

5.17

Where a corporation no longer serves the purpose for which it was incorporated or where the members have lost the interest in the corporation, it

may be desirable for the members to terminate the existence of the corporation. The most straight forward method of dissolution is the surrender of the charter (see s. 319 of the Act and s. 23 of the Regulations).

Part 6 ■ CHARITIES

Preface

- 6.1** These guidelines have been prepared to provide some basic information and explanation on how to incorporate and operate a charity in Ontario. They are not intended to replace reference to and knowledge of the relevant legislation and case law (that is, court decisions) relating to charities. Therefore, when necessary, a lawyer knowledgeable in charities and fiduciary law should be consulted.

Introduction

- 6.2** The purpose of these guidelines is to assist the public and general legal practitioners in understanding the procedure in applying for Letters Patent incorporating a charity (that is, incorporation of a corporation without share capital with charitable objects) and the duties and responsibilities for operating a charity. This part of the Handbook sets out some basic principles of charities and fiduciary law and makes reference to some general federal and provincial provisions applicable to charities. Unless otherwise stated, reference to any Act is to legislation of the Ontario legislature.

Two Types of Non-Profit Organizations

- 6.3** The term “non-profit” is often used in everyday conversation interchangeably with the word “charity”; however, an important distinction exists. There are two types of non-profit organizations:

- A.** Non-profit-charitable, and
- B.** Non-profit-not-charitable

Only those organizations that pursue purposes legally charitable are non-profit-charitable. All other non-profit organizations are non-profit-not-charitable.

What Is a Charity?

- 6.4** Charity, in the legal sense, describes those purposes that our legislators and courts have classified as charitable. Hubert Picarda notes, in The Law and Practice Relating to Charities. 2nd ed. London: Butterworths, 1995 at pages 5-6:

The word charity in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense relief of the poor. But lawyers and the courts do not employ the word in either of these senses. The legal meaning of the word differs from the popular meaning, and it has been said on the highest authority that charity in the legal sense is a word of art of precise and technical meaning. And yet, paradoxically, no satisfactory and precise definition of charity in its legal sense has ever been found.

Originally, in England, the preamble to the **Charitable Uses Act** (1601), 43 Eliz. 1, c. 4 (usually referred to as the Statute of Elizabeth I) enumerated a list of specific charitable purposes as follows:

. . . the relief of the aged, impotent and poor people . . . maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities . . . repair of bridges, ports, havens, causeways, churches, seabanks and highways . . . education and preferment of orphans . . . relief, stock or maintenance for houses of correction . . . marriages of poor maids . . . supportation, aid and help of young tradesmen, handi-craftsmen and persons decayed . . . relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes.

In case law, the courts developed and extended the list of specific charitable purposes by analogy with purposes already established as charitable. In this fashion, the legal meaning of charity expanded and evolved and continues to expand and evolve to meet changing social circumstances and needs.

The courts have classified charity as consisting of four principal divisions:

- A.** The relief of poverty.
- B.** The advancement of education.
- C.** The advancement of religion.
- D.** Other purposes beneficial to the community, as determined by the courts, but not falling under any of the preceding heads.

This classification of recognized charitable purposes is frequently referred to by the courts and is used by legislators as a general definition of charity, but in practice the precise legal meaning of charity is embodied principally in case law.

Charities' Privileged Status

6.5 Charities are entitled to a number of legal and tax privileges.

The legal privileges include cy-près and scheme-making and government's role of assuring that funds and other property that are supposed to be used for charitable purposes are in fact used for those charitable purposes.

Cy-près and scheme-making apply only to charity. They protect funds and other property for charity notwithstanding that the particular charitable purposes to which the property is supposed to be applied have become impossible or impracticable to carry out, or that a particular charitable organization has ceased to exist, never existed or cannot be identified, or that there are omissions in or practical problems with a donor's arrangements for administration of property for charity.

The tax privileges include exemption from, and reduced liability for, certain municipal, provincial and federal taxes, as well as the ability to issue income tax credit receipts for donations, if registered as a "registered charity" under the federal **Income Tax Act**.

Not all organizations qualify for charitable status. Considering the most useful and important role that charities play in our society and the privileges they enjoy, it is not surprising that a number of conditions must be satisfied before an organization can qualify as being charitable.

Essential Requirements of Qualification As a Charity

6.6 Regardless how philanthropic, benevolent, beneficial or compassionate a purpose may be, to qualify as a charity, it must satisfy each of the following three requirements:

- A.** The objects or purposes must be charitable according to section 7 of the **Charities Accounting Act**, R.S.O. 1990, C. 10, as amended, as interpreted and applied by the courts;
- B.** The objects or purposes must be exclusively and wholly charitable. There cannot be a mixture of charitable and non-charitable purposes; and
- C.** The objects or purposes must promote a public benefit of a nature recognized by the courts as a public benefit.

The following is a clarification of these three requirements.

6.6.1 Section 7 of the Charities Accounting Act

The first requirement for a charity is that the objects or purposes must be charitable according to section 7 of the **Charities Accounting Act**, as interpreted and applied by the courts. Section 7 of the **Charities Accounting Act** provides that:

“charitable purpose” means,

- (a) the relief of poverty,
- (b) education,
- (c) the advancement of religion, and
- (d) any purpose beneficial to the community, not falling under clause (a), (b) or (c).

This statutory definition mirrors the courts' classification of recognized charitable purposes. The courts have interpreted specific terms used in this general statutory definition of charitable purposes and have determined whether specific purposes fall under one or other of the definition's four heads of charity. Accordingly, case law is a principal source of law on the precise meaning of “charitable purposes.”

6.6.2 Exclusively and Wholly Charitable

The second requirement for a charity is that every object or purpose must be charitable. The reasoning behind this requirement is that a charity can pursue any one of its objects, to the exclusion of all the rest. Therefore, if there were a mixture of charitable and non-charitable objects, the charity's property would not be restricted to be applied solely for charitable purposes. Consequently, every object is required to be charitable.

At the initial stage of establishing a charity, if the wording of an object can be interpreted as either charitable or non-charitable, the courts have declined to recognize the purpose as charitable. However, mere incidental or ancillary powers, which are not themselves charitable, will not deprive an organization of its charitable status. If, on the other hand, powers cease to be merely incidental and become primary, that is, become purposes of the charity, then, regardless how they may formally be couched in the language of the document governing the charity, the organization would be operating outside the limits inherent in charitable status.

6.6.3 Public Benefit

The third requirement that objects or purposes must promote a public benefit of a nature recognized by the courts as a public benefit may be best illustrated by way of phrasing the requirement in the form of a question: “Although only a limited number of persons may be likely to benefit directly, does the gift or purpose, by its very nature, spirit and intent, extend the benefit to a sufficiently large segment of the community to constitute a public as opposed to a private purpose?” If the court is able to answer this question affirmatively, the purpose will have satisfied the public benefit test. For example, while only the particular sufferers of a disease may directly benefit from research to control or cure the disease, a large segment of the community (all the potential future sufferers of the disease) also may benefit from that research and the whole of the community may benefit by being relieved of risks of contracting the disease and the financial and other costs of others in the community contracting the disease.

Special Situation of Religious Organizations

6.7 Under the **Religious Organizations’ Lands Act**, R.S.O. 1990, R. 23, a religious organization means an unincorporated association of persons which is:

- A.** Charitable according to the law of Ontario;
- B.** Organized for the advancement of religion and for the conduct of religious worship, services or rites; and
- C.** Permanently established as to continuity of its existence and as to its religious beliefs, rituals and practices.

The Religious Organizations’ Lands Act confers on the trustees of a religious organization the benefit of perpetual succession without the necessity of incorporation. If a religious organization becomes incorporated, its ecclesiastical, canon or church laws, rules or regulations may be subordinated to the provisions of the **Corporations Act**. Furthermore, its power to lease real estate or buildings to others may be substantially restricted by the **Charities Accounting Act**.

Section 129 of the **Corporations Act**, prohibits the passing of by-laws to regulate the conduct of the affairs of the corporation contrary to the **Corporations Act**. Thus, if an ecclesiastical, canon or church law, rule or regulation of a religious organization is contrary to a provision of the **Corporations Act**, the religious organization, once incorporated, will no longer be able to use that law, rules and regulations in administering its affairs.

With regard to the power to lease, subsection 10(1) of the **Religious Organizations' Lands Act** allows the trustees of a religious organization to lease any land held by them on behalf of the organization for a maximum period of 40 years in all, provided the land is no longer required for any of the religious organization's religious purposes. On the other hand, the **Charities Accounting Act**, which applies to all charities, unless the charity is exempt under special legislation, requires that land be held only for the purpose of actual use or occupation for the charitable purpose of the organization.

Accordingly, a religious organization ought to carefully consider these issues before incorporating.

Role of the Public Guardian and Trustee

6.8 Before dealing with the nuts and bolts of incorporating a charity and related duties, responsibilities and powers, it may be appropriate to briefly examine the role of the Public Guardian and Trustee.

6.8.1 Historical Background

For centuries the Crown has been recognized by the courts as having a special interest in, and legal standing to bring to the courts issues about the administration and management of charitable property. This special interest and standing is referred to as *Crown parens patriae* jurisdiction. The Attorney General traditionally represented the Crown in all proceedings before the courts, including those on behalf of, or in protection of charities.

In Canada, "charities" is a matter of exclusive provincial legislative jurisdiction under the **Constitution Act**, 1867, 30 & 31 Vict., c.3, s. 92, Head 7 (U.K.) although other legislation, for example, the federal **Income Tax Act**, also may affect charities.

The **Charities Accounting Act**, enacted in 1915, gave the Attorney General statutory authority to supervise the administration of charitable property. After the **Public Trustee Act** was passed in 1919, the **Charities Accounting Act** was amended, to give that statutory supervisory authority to the Public Trustee (now known as the Public Guardian and Trustee).

6.8.2

Notification and Reporting Requirements to the Public Guardian and Trustee

Under the **Charities Accounting Act**, every trustee, including any estate trustee and any corporation incorporated for a religious, educational, charitable or public purpose, that administers or holds any property or proceeds for a religious, educational, charitable or public purpose, must give written notice thereof to the Public Guardian and Trustee, within one month of the inception of the charitable trust or the deceased's death, or within one month of the incorporation of the corporation. The written notice must include a copy of the trust deed or declaration, will, corporate charter or other written instrument under which the property is held for a religious, educational, charitable or public purpose.

In addition, the Public Guardian and Trustee requires the information summarized in **Appendix H** be provided on an ongoing basis under the **Charities Accounting Act** with respect to charities and charitable funds. This information is used in monitoring compliance with charities law and to identify charities that may be candidates to receive funds and property of defunct charities, charitable gifts to named charities that cannot be identified, and charitable gifts not designated to be given to any named charity. The Public Guardian and Trustee is authorized to require production of any information concerning the administration and management of funds and other property administered or held for religious, educational, charitable or public purposes and requires production of such information about particular charities or charitable funds as circumstances - usually concern about the proper administration and management of the property - warrant.

On account of the province's constitutional jurisdiction over charities, all charities operating in Ontario, including those out-of-province charities only soliciting funds in Ontario, whether incorporated provincially, federally or otherwise are required to comply with the **Charities Accounting Act** and file information and documentation required by the Public Guardian and Trustee.

Where a Will is submitted for probate (now called applying for a Certificate of Appointment of Estate Trustee with a Will) in Ontario and the Will provides for any gift to charity, the applicant is legally required to notify the charitable organization, if any, named to receive the gift and the Public Guardian and Trustee and to provide a copy of the Will to the Public Guardian and Trustee. The Public Guardian and

Trustee reviews the Will to determine if the gift is to a charitable organization (for example, "...to the ABC Charitable Organization...") that is responsible for getting in and applying the gift, or a gift (for example, "...to feed the hungry...") that no charitable organization has legal standing to deal with. In the latter case, the Public Guardian and Trustee acts to assure that the gift is applied to the charitable purposes that it is supposed to be applied to. Under the **Charities Accounting Act** the Public Guardian and Trustee will require the estate trustee to provide the information that may be required in the particular circumstances.

6.8.3 Remedial Action by the Public Guardian and Trustee if Misapplication, Misappropriation, Maladministration or Failure to Apply to Specified Charitable Purposes

The Public Guardian and Trustee can require that the accounts of the administration and management of a charity's funds and other property or the accounts of the administration of an estate in which the Will provides for a charitable gift be passed in the Ontario Court (General Division). If it should be found, for example, that the charity's funds or other property have been misapplied, misappropriated or maladministered or are not being applied to the charitable purposes of the charity, the Public Guardian and Trustee may apply to the Ontario Court (General Division) for an order appointing the Public Guardian and Trustee as trustee of the charity's property. Misappropriation or misapplication of charitable funds or other property or an estate charitable gift may also warrant legal proceedings against the directors or trustees of the charity or the estate trustee.

6.8.4 Benefits by Notification and Reporting to the Public Guardian and Trustee

Besides being legally required to comply with the **Charities Accounting Act** and to provide the appropriate information and documentation to the Public Guardian and Trustee, a charity which notifies and reports to the Public Guardian and Trustee derives the following additional benefits:

- A.** It will be assisted in obtaining funds and donations because members of the public, charitable foundations and government agencies which provide such funding and donations frequently seek confirmation from the Public Guardian and Trustee that the charity is complying with the legislation.

-
- B.** The Public Guardian and Trustee can recommend that the charity be considered to receive cy-près defunct charities' property or gifts from estates to non-existent, defunct or unidentifiable charities or to purposes that the charity carries out ("cy-près" means to apply charitable funds or other property to charitable purposes as near as possible to the original purposes to which it was supposed to be applied, the original purposes having become impossible or impracticable to carry out).
 - C.** It will be assisted in receiving gifts made to it by will, when the gift has been made to a former name of the charity, or a popular or common name or acronym that the charity uses or used to use.

6.8.5 Pre-Approval of Applications for Incorporated Charities

Because of the Public Guardian and Trustee's role in supervising the application of charitable property, applications for charities' Letters Patent, Supplementary Letters Patent, amalgamations, continuations, surrenders of charter, and revivals after dissolution, are required to be submitted for review and approval of the Office of the Public Guardian and Trustee before being submitted to the Companies Branch of the Ministry of Consumer and Commercial Relations.

Incorporating a Charity

6.9 In Ontario, there are principally three methods of incorporating a charity:

- A.** Through a private bill or special Act of the provincial legislature
- B.** By federal Letters Patent issued through Industry Canada, and
- C.** By Ontario Letters Patent issued through the provincial Ministry of Consumer and Commercial Relations, Companies Branch.

6.9.1 Incorporation by Private Bill or Special Act of the Provincial Legislature

The provincial legislature can pass a private bill or special Act incorporating a charity, but the procedure is quite time-consuming and expensive. Very few charities, in fact, are created by private bill or special act of the legislature. The procedure is set out in the publication *Standing Orders of the Legislative Assembly* and further information can be obtained by contacting Legislative Counsel, Suite 3600, Whitney Block, 99 Wellesley Street, Queen's Park, Toronto, Ontario, M7A 1A2; telephone (416) 326-2841.

6.9.2 Incorporation by Federal Letters Patent

Letters Patent can be issued under the **Canada Corporations Act** to incorporate a charity. Applicants should contact Industry Canada, Corporations Directorate, Jean Edmonds Tower South, 9th Floor, 365 Laurier Avenue West, Ottawa, Ontario K1A 0C8; telephone: (613) 941-9042, for particulars of application procedures, forms and fees.

Although a charity may be incorporated federally, if it operates or has an office or undertaking in Ontario or otherwise makes itself subject to Ontario law, it must comply with Ontario law concerning charities on account of the province's constitutional jurisdiction over charities.

6.9.3 Incorporation by Ontario Letters Patent

The most common method is to apply under the provincial **Corporations Act** for the issuance of Letters Patent incorporating a charity. Whereas incorporation of a business is a matter of right, incorporation of a charity is at the discretion of the Ministry of Consumer and Commercial Relations, who issues the Letters Patent through the Companies Branch.

6.9.4 Name of the Charity

The proposed name of a charitable corporation must satisfy all of the requirements set out in Part 2 of this Handbook, and in addition, must be indicative of the objects of the charity, except in the case of a foundation, which may include reference to the name of a private individual or family.

6.9.5 Objects

Further to what has already been stated, namely that the objects must be exclusively and wholly charitable, the application must set out with precise specificity the nature and purpose of the charitable undertaking. It is not acceptable to simply reproduce the four principal heads of charity. The objects must not be stated in such general, ambiguous or obscure language that neither the public, the Public Guardian and Trustee, nor the courts will be able to determine how the property of the charity is supposed to be applied. Vague terminology that can be interpreted as promoting both charitable and non-charitable purposes should not be used.

The applicants' motives or personal reasons for incorporating the charity are immaterial and should not form part of the object clauses.

Because precise drafting of objects can be quite difficult, a set of draft object clauses which may serve as a guide for applicants is set out in **Appendix I**.

6.9.6 Special Provisions

The special provisions in **Appendix J** are required to be included in section 5 of the application.

With reference to clause F (distribution upon dissolution) of the special provisions, it should be noted that a disposition to “qualified donees” or “registered charities” as defined in the federal **Income Tax Act** or to a municipality is not charitable. If disposition to qualified donees or registered charities is desired upon dissolution of the charity, the third alternative form of clause F should be used, specifying either “qualified donees” or “registered charities” and either “Ontario” or “Canada” where indicated.

6.9.7 Incidental and Ancillary Powers

The incidental and ancillary powers are merely means by which the charity will fulfill its objects. A set of standard optional power clauses have been included in **Appendix K**. Such power clauses are optional, and if they are to be included as part of the Letters Patent, they should be set out in section 5 of the application, together with the other special provisions referred to hereafter. It is important that directors and officers familiarize themselves with these power clauses and special provisions as they reflect the present state of the law concerning charities in Ontario.

Review of Applications by the Public Guardian and Trustee

6.10

6.10.1 Procedure, Fees, Review

As previously noted, all applications for incorporation of a charity are required to be submitted for review and approval to the Public Guardian and Trustee before being submitted to the Companies Branch of the Ministry of Consumer and Commercial Relations.

The duplicate, original, signed copies of such applications (or a draft) should be submitted to the Office of the Public Guardian and Trustee,

to the attention of the Charitable Property Division, together with a check or money order made payable to the Public Guardian and Trustee for the non-refundable review fee. The review fee is established under the **Public Guardian and Trustee Act** and, as of this writing (September, 1997) is \$150.00. Please note on the face of the cheque or money order Public Guardian and Trustee account 999-999, GL 515-10 and, if known, the applicant's Public Guardian and Trustee file number. If a draft application is submitted for review, an additional review fee is not required to be paid on submission of the final application.

In the case of applications for amalgamation of corporations the review fee is payable for **each** amalgamating corporation.

If correspondence from the Office of the Public Guardian and Trustee about an application is not responded to by the applicants for more than three months, the application will be regarded as abandoned. If the application thereafter is proceeded with, a new application fee will be required to be paid.

Upon the Public Guardian and Trustee approving an application, the duplicate original signed copies will be returned to the applicant, marked "approved," to be filed with the Companies Branch of the Ministry of Consumer and Commercial Relations.

In determining whether the purposes of an organization are charitable, the Public Guardian and Trustee examines the objects with a view to ascertaining whether such purposes have been held by the courts to be charitable or are analogous to purposes judicially determined to be charitable. The Public Guardian and Trustee attempts to interpret the law in a contemporary context and as imaginatively as possible, although in a conservative fashion, leaving it to the courts to provide innovations. Court decisions, therefore, are the ultimate guidelines. Based on court decisions, the concept of charity is widening, although gradually.

The approval or disapproval by the Public Guardian and Trustee is not an indication that the Public Guardian and Trustee promotes or disapproves of the purposes of the organization. No moral or ethical judgment is being made. The Public Guardian and Trustee is only opining as to whether the purposes come within the legal concept of charity.

Often, considerable delay is unnecessarily incurred in processing applications for incorporation because the objects are too broad or lack

specificity. To assist applicants in avoiding this delay, the Public Guardian and Trustee is willing and pleased to comment on any draft application. However, in order for the process to be as productive as possible, the Public Guardian and Trustee requests that full information be provided about the proposed activities and about the means by which such activities will be achieved.

It would also be helpful if the organization could provide any literature or documents which may serve to illustrate the nature of its work.

If the organization has already been operating as a non-profit-not-charitable entity and wishes to become a charity, copies of its previous financial statements are required together with any application.

Although the Public Guardian and Trustee is pleased to comment on draft applications and hopes that this Handbook assists the applicants in that regard, the Public Guardian and Trustee cannot prepare draft applications. If you require such assistance you may wish to consider seeking assistance from a professional familiar with the law relating to charities and fiduciary duties.

It may be appropriate at this point to state that approval by the Public Guardian and Trustee is not a certification that the Public Guardian and Trustee is confident that the organization will be well-managed in accordance with the laws relating to charities; that can only be demonstrated and determined later by examining the organization's actual activities and reviewing its annual reports and financial statements.

6.10.2 Grounds for Refusing Applications for Charitable Organizations

The following are some of the grounds on which the Public Guardian and Trustee has in the past refused to approve an application for charitable Letters Patent:

- A.** Objects are not wholly and exclusively charitable.
- B.** Objects are stated in broad and vague terminology.
- C.** Insufficient information and documentation have been submitted to determine whether vaguely stated objects are intended to be legally charitable.

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- D.** The power clauses purport to include a purpose and the purpose is not legally charitable.
 - E.** It is not likely that the proposed charity will be properly administered, considering previous failure of the incorporators to comply with the law relating to charities.
 - F.** The organization has been operating prior to incorporation as an unincorporated association and its financial documents indicate that a disproportionate amount of charitable funds is being applied for non-charitable purposes or administrative expenses.
 - G.** The name of the organization does not reflect the purposes and objects set out in the application.
 - H.** The organization is primarily promoting private members' interests or benefits.
 - I.** The organization is pursuing political purposes.
 - J.** The organization (either an unincorporated association or a non-charitable corporation) is applying to become an incorporated charity and its liabilities exceed its assets.

Other Applications Reviewed by the Public Guardian and Trustee

6.11

6.11.1 Supplementary Letters Patent - Variation of the Charity's Objects or Powers

A variation to the objects or powers of an incorporated charity is obtained through an application for Supplementary Letters Patent. The most common variations are as follows:

- 1.** Expanding the objects to take on different purposes, but similar in kind to the original purposes of the corporation.
- 2.** Rewriting the objects to reflect social changes in the use of certain terminology, e.g., replacing terms such as "mentally handicapped" with words such as "developmentally or intellectually handicapped".

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3. Changing the name of the charity.
 4. Including provisions relating to the appointment and election of directors.
 5. Expanding on the power clauses.

The funds and other property of a charity can be applied only to its charitable objects. Circumstances may arise, however, whereby an alteration or variation is required in order to ensure that the charity's resources are applied efficiently for the original objects intended. Social and economic changes may have taken place subsequent to the time when the charity was founded, which have rendered the objects obsolete, lacking in usefulness, or impossible to fulfill. Where the management and members of a charity propose to alter the purposes of a charity, they may seek the preliminary views of the Public Guardian and Trustee. The Public Guardian and Trustee's primary concern is that the proposed objects should not be so dissimilar in character to those in the original charter that such a variation would constitute an unjustifiable departure from the spirit and intent of the original objects.

On occasion the management and members of a charity may wish to add or change the objects or powers in a way that would be regarded as significant from a charities law perspective, most notably to allow the charity's funds and other property to be used for purposes or subject to powers significantly different than the existing purposes and powers under which the charity received the funds and other property. In such circumstances, the applicants may be required to include in the application for Supplementary Letters Patent a clause such as the following:

All funds and other property held by the corporation immediately before these Supplementary Letters Patent become effective or at any time thereafter received by the corporation pursuant to any Will, deed or other instrument made before these Supplementary Letters Patent become effective, together with all income thereon and accretions thereto, shall be applied only to the objects of the corporation and subject to the powers of the corporation as they are immediately before these Supplementary Letters Patent become effective.

This effect of this clause on a corporation's funds or other property is:

1. Funds or other property acquired after the Supplementary

Letters Patent became effective:

- can only be used in accordance with the purposes or powers as changed by the Supplementary Letters Patent.

- 2.** Funds or other property acquired before the Supplementary Letters became effective (including subsequent income received from a will, deed or other document made before the Supplementary Letters Patent became effective):
 - can only be used in accordance with the purposes or powers as they read immediately before they were changed by the Supplementary Letters Patent.

6.11.2 Dissolution and Surrender of Charter

All Letters Patent of incorporated charities should contain a provision whereby, upon dissolution, and after payment of all debts and liabilities, the charity's remaining property shall be distributed or disposed of to charitable organizations which carry on work (of a similar nature) solely in Ontario, or, alternatively, in Canada. Where the charity does not have such a provision in its Letters Patent, the directors are required to initiate an application to the Ontario Court (General Division) for an order disposing of the remaining property, *cy-près*. It is important to note that any property which is to be applied for a special charitable purpose will continue to be impressed with that special purpose trust after being transferred to another charity.

In the course of dissolution, the charity should not pay any salary, remuneration or honorarium to a director. Nor should a director be allowed to purchase any property of the charity, without prior approval of the court.

Companies Branch will allow a corporate charity to surrender its charter if the charity can demonstrate the following:

- A.** that a majority of the members have authorized the surrender of the charter at a meeting duly called for that purpose, or consent in writing of all the members entitled to vote at that meeting has been submitted;
- B.** that it has no debts or liabilities or has made provision therefor;
- C.** that it is not involved in any legal proceedings in any court;
- D.** that it has distributed its remaining funds pursuant to its

dissolution clause;

- E.** That it has complied with the **Charities Accounting Act** and has the Public Guardian and Trustee's consent.

As previously noted, the application for surrender of charter must be submitted for review and approval of the Office of the Public Guardian and Trustee before being submitted to the Companies Branch of the Ministry of Consumer and Commercial Relations. In addition to any documentation and information required under the **Charities Accounting Act**, and the review fee, the Public Guardian and Trustee will wish to be advised why the charity's charter is being surrendered.

Should the directors have any concerns or inquiries relating to the dissolution or surrender of the charity's charter, they may seek the advice of the Office of the Public Guardian and Trustee or of the Companies Branch of the Ministry of Consumer and Commercial Relations.

6.11.3 Revival of Charter

If a charity's Letters Patent have been cancelled by the Companies Branch on account of failure to comply with the filing requirements under the **Corporations Information Act** or for other sufficient cause, it can apply to the Companies Branch for revival of its charter. The Companies Branch can, however, request that the Public Guardian and Trustee first provide its consent to the revival of the dissolved charity, normally where the charitable corporation has been dissolved for more than five years.

Under section 322 of the **Corporations Act** and in conjunction with the **Escheats Act**, any real or personal property of an incorporated charity that has not been disposed of at the date of its dissolution, is forfeited to the Crown, in the person of the Public Guardian and Trustee. Under such circumstances, the Public Guardian and Trustee will hold the assets for the charitable purposes of the incorporated charity.

Where the Companies Branch requires the Public Guardian and Trustee's consent to the revival of a dissolved charity, the revival of the charter will be considered by the Public Guardian and Trustee if filing requirements under the **Charities Accounting Act** are complete and the directors submit the following documentation and information:

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- A.** written request for revival of the charity's charter, together with a statement of the cause or reasons for dissolution;
 - B.** a declaration that the organization continues to pursue its objects which must be wholly and exclusively charitable in law;
 - C.** a copy of the charity's Letters Patent and any Supplementary Letters Patent, and
 - D.** the review fee of \$150 payable to the Public Guardian and Trustee is submitted.

6.11.4 Amalgamation

Subject to certain conditions, the **Corporations Act** allows two or more corporations under that Act to amalgamate as one corporation. Consequently, the Act provides a procedure for one or more charities incorporated under that Act and one or more other corporations incorporated under that Act to be amalgamated. The following should be submitted for the Public Guardian and Trustee's review in connection with any proposed amalgamation involving a charitable corporation:

- A.** The Application for Amalgamation (which includes the amalgamation agreement).
- B.** The Public Guardian and Trustee's review fee, which is payable in respect of **each** of the amalgamating corporations.
- C.** The annual audited financial statements for **each** of the amalgamating corporations for the last three years (or since incorporation, if incorporated less than three years ago).

Generally, a corporation (whether charitable or not) whose liabilities exceed its assets will not be permitted to amalgamate with a charitable corporation. This restriction prevents non-charitable liabilities from being transferred into the charitable sector and charitable property not now exposed to risk for a charitable liability from becoming exposed to that liability.

If the amalgamation will purport to authorize funds or other property of one of the amalgamating corporations to be used for purposes or subject to powers that are significantly different, from a charities law perspective, than those under which the property was received by the amalgamating corporation, the amalgamation agreement may be

required to be amended to include a clause similar to the following:

All funds and other property held by the amalgamating corporations immediately before the Letters Patent of Amalgamation become effective or at any time thereafter received by the amalgamated corporation pursuant to any Will, deed or other instrument made before the Letters Patent of Amalgamation become effective, together with all income thereon and accretions thereto, shall be applied only to the objects of, and subject to the powers of the respective amalgamating corporation as they are immediately before the Letters Patent of Amalgamation become effective.

Duties, Responsibilities and Powers of Directors and Trustees

6.12

6.12.1 "Directors", "Trustees", and "Charitable Fiduciaries"

Directors manage corporations, while trustees administer trusts. However, directors of incorporated charities and trustees of charitable trusts are both charitable fiduciaries with similar duties to administer and manage the corporate or trust property and to apply that property to the charitable purposes to which it is supposed to be applied.

Directors or trustees are legally responsible for the administration and management of a charity. They have full responsibility for its administration and must always ensure compliance with all the laws, statutes and principles applicable to charitable fiduciaries.

6.12.2 Number of Directors Required

A minimum of three directors are required if the charity is to be incorporated. But the number of directors should always be determined on the basis of how many persons would be required to ensure an effective and efficient management and administration of that particular charity.

Since directors, as opposed to patrons (who may be appointed for their status in the community), are expected to be actively involved in the decision-making process, they should be selected on the basis of their relevant experience, skills and knowledge in the specific charitable field.

6.12.3 Duty to be Reasonable, Prudent and Sagacious

Directors must act reasonably, prudently and sagaciously in all matters concerning the charity. They must always bear in mind the interests of the charity and not allow their personal interests or prejudices to affect their conduct and decisions. The use of the charity's property must be strictly confined to those purposes as set out in the Letters Patent, and for no other.

If the directors have any discretion in the selection of persons to be benefited by the charity's funds or property, they must ensure that the power is exercised with complete fairness, both as to appearance in form and substance of decision.

If they should have any doubt about the proper exercise of their discretion, they may consult with the Public Guardian and Trustee, and, if necessary, seek the opinion, advice and direction of the Ontario Court (General Division) pursuant to section 60 of the **Trustee Act**.

The directors must ensure compliance with all specific charitable purpose trusts. They must furthermore scrutinize the application of the charity's property to ensure that no excessive administrative expenses are incurred.

All real property should be properly registered in the name of the charity and be adequately insured.

6.12.4 Duty to Act Gratuitously

The general rule is that the charity shall not pay remuneration to a director in any capacity whatsoever, unless court approval is first obtained. Directors are, however, entitled to receive payment out of the charity's property for reasonable and necessary out-of-pocket disbursements. The directors, furthermore, should not benefit, either directly or indirectly, from any transaction with the charity.

6.12.5 Duty to Avoid Conflict-of-Interest Situations

Not only must a director avoid all potential conflicts of interest, but must also avoid any appearance of a conflict of interest.

Under very special and exceptional circumstances, the court can authorize a non-arm's-length transaction between a director and the charity, provided that the director seeks the court's approval, with full

disclosure and due notice to the Public Guardian and Trustee, before the transaction is completed.

6.12.6 Duty to Account

Directors are responsible for the charity's funds and other property and for funds and property collected or received for designated charitable purposes. Charity directors, therefore, must ensure that proper books of accounting are maintained and all invoices (also known as vouchers) required to substantiate their accounts retained. The accounts and vouchers should be retained by the charity until such time as the accounts may be formally approved by a judge of the Ontario Court (General Division).

Any charity can be compelled to pass its accounts by the Public Guardian and Trustee. The present practise of the Public Guardian and Trustee, however, is to ask for the charity's accounts to be passed only where there are concerns about the administration and management of the charity, or when it has failed to comply with notification and filing requirements under the **Charities Accounting Act**.

The Public Guardian and Trustee may also specifically require a charity to file copies of its financial statements. A charity incorporated under the provincial **Corporations Act** is required to prepare annual audited financial statements conforming to the financial recording and disclosure requirements of that Act. Preferably the accounts should set out, in detail, the capital assets, income, expenditures or disbursements and investments. If the financial statements are prepared in a business format, explanatory notes should be added to disclose any conflict-of-interest or non-arm's-length transactions, or payments to a director in any capacity whatsoever.

In certain cases, it may also be necessary to include explanatory notes to particularize how the charitable activities were carried out. If the Public Guardian and Trustee is not satisfied with the form or content of the financial statements, additional information and evidence may be required to be provided to the Public Guardian and Trustee or the accounts may be required to be passed before the courts.

6.12.7 Duty to Manage the Charity's Assets

Responsibility for the management of the charity's funds and assets is the directors' alone. Such responsibility cannot be delegated to employees or financial consultants. Where the capital fund is

substantial, it may be appropriate for the directors to enter into suitable arrangements for the provision of investment management services by accountants, stock brokers, and other financial consultants, and to pay for these services as part of the administrative expenses of the charity. Whatever form the financial service arrangements may take, the directors must, at all times, retain general control over the funds.

6.12.8 Power to Delegate Some Responsibilities

Although the directors are to act in person and to make all major decisions concerning the charity, they can delegate to employees the day-to-day management of the charity. Legally, however, the directors remain responsible and therefore must maintain proper supervision and control over the work of the employees. In the case of technical or specialized matters, the directors may seek the advice and retain the service of professionals.

6.12.9 Power to Invest

Most Letters Patent for charities contain one of the following powers to invest:

To invest funds of the corporation in such manner as the directors may determine in those investments authorized by law for trustees.

—or—

To invest and reinvest the funds of the corporation in such manner as determined by the directors, and in making such investments, the directors shall not be limited to investments authorized by law for trustees, provided such investments are reasonable, prudent and sagacious under the circumstances and do not constitute, either directly or indirectly a conflict of interest.

If no power to invest is specified in Letters Patent, the charity should restrict its investments to those investments authorized by law for trustees.

6.12.10 Diversification of Investments

Where the capital of the charity is substantial, it is essential that the charity maintain a balanced portfolio of equity assets and debt securities. Furthermore, there may be need for diversification.

Diversification means spreading the funds available for investment among a number of different companies, and ideally among a number of different industries and financial institutions, so that a decline or failure of a single company or companies operating in a single area of industry, will not seriously affect the financial viability of the charity.

6.12.11 Investment in Shares and the Charitable Gifts Act

Where the charity has broad investment powers and contemplates investing in shares and the equity market, it should proceed cautiously. The equity market is subject to wide fluctuations due to a number of economic factors which are difficult, if not impossible, to forecast or predict. Because of the dangers of high risk investments, there is no requirement that the directors obtain the best return on the funds to be invested, but there is an overriding duty that the directors exercise their powers of investment in a reasonable, prudent and sagacious manner, having in mind both the short-term needs and long-term goals of the charity.

Trustees should be aware that the **Charitable Gifts Act** restricts a charitable organization from owning, either directly or indirectly, more than a ten per cent interest in any business. If a charity, should obtain, by way of bequest, shares which represent more than a ten per cent interest in any business, they must dispose of such portion of the shares, bonds, debentures, mortgages or other securities that represents more than ten per cent interest in such business within seven years after the death of the testator, in the case of a bequest under a Will, and within seven years after the date of the instrument, where the gift is received other than under a Will. A judge of the Ontario Court (General Division) may, however, extend the period for disposition of assets, if the court is satisfied that the extension will benefit the charitable purposes concerned.

6.12.12 Non-Arm's Length Investments

Although the federal **Income Tax Act** does not prohibit private foundations from making certain non-qualified investments, such as loan-backs to donors or directors of the charity, or companies in which they have an interest, such transactions can constitute a breach of fiduciary duty and an improper investment under provincial statutory and case law concerning charities. The reader is referred to the decision in the case of *Re David Feldman Charitable Foundation* (1987), 58 O.R. (2d) 626, 26 E.T.R. 86.

6.12.13 Power to Hold Realty

Under the **Charities Accounting Act**, a charity, unless special legislation specifically provides otherwise, can hold land only for the purpose of actual use or occupation for the charitable purposes of the charity. A charity, therefore, cannot hold land for purposes of leasing or investment. Under that Act, when, in the opinion of the Public Guardian and Trustee, land held for a charitable purpose,

- A.** has not been actually used or occupied for the charitable purpose for a period of three years;
- B.** is not required for actual use or occupation for the charitable purpose; and
- C.** will not be required for actual use or occupation for the charitable purpose in the immediate future,

the Public Guardian and Trustee may cause the land to vest in his or her corporate name and thereafter sell it and apply the proceeds of the sale for the charitable purpose. A judge of the Ontario Court (General Division) may revest the land in the charity if satisfied that any of the three conditions have not been met or revest it for a period of not more than three years if satisfied that the land is not required for actual use or occupation for the charitable purpose but will be required for actual use or occupation for the charitable purpose in the immediate future.

Ex-Gratia (“Voluntary”) Payments by a Charity

- 6.13** Occasionally a charity is requested by next-of-kin of a deceased to forego or accept only part of the deceased’s gift to the charity under the provisions of the Will. The English courts have held in two reported cases, *Re Snowden and Re Henderson*, [1970] Ch. 700, [1969] 3 All E.R. 208, that only with the authority of the court or the Attorney General (in Ontario, the Public Guardian and Trustee) can directors of a charity lawfully make voluntary payments out of, or forego or require payment of only part of the charity’s entitlement to the deceased’s estate. In those cases, it was further held that the authority of the Attorney General and the courts should not be exercised lightly or on slender grounds, but was a discretionary power to be exercised only where one could conclude that it would be morally wrong to refuse the payment.

Charities Operating Abroad

6.14

At times of crisis in foreign lands, there is usually a rapid growth of small charities which raise funds in this country for foreign relief projects. Unfortunately, directors or trustees of these charities may be inexperienced in foreign relief operations and unfamiliar with the fiduciary responsibilities they have undertaken. For the majority of these charities, it may be preferable, from both an economic and administrative point of view, if they collaborate by means of a joint venture with one of the many established Canadian charities which operate continuously abroad. Under this type of arrangement, the small charity can provide financial support and Canadian personnel, while the more experienced charity provides the organizational and logistical networking necessary to deal with national governments, international communication and transportation. It is important to note that if the small charity is registered under the federal **Income Tax Act** and decides to operate in this fashion, it must ensure that the larger charity also is registered under the **Income Tax Act** in order for payments made by the small charity to the larger charity to satisfy the disbursement quota requirements under the **Income Tax Act**. Alternatively, the large charity can act as the smaller charity's agent, in which event the larger charity need not be registered for Canadian income tax purposes.

Charities which intend to become directly involved abroad in the distribution of food, medical supplies or in projects to relieve poverty or physical hardship are advised to ensure the following:

- A.** To take the necessary steps, before soliciting, collecting and allocating funds for a particular charitable project, to determine whether the need demonstrably exists and whether the foreign country will allow such relief projects to be carried out within its territorial boundaries, e.g., foreign missionaries are not allowed into China, therefore, funds for such missions should not be solicited from the public.
- B.** To collect and obtain properly qualified advice and information as to the procedures and methods of establishing the project from the point of view of transportation, authorization for imports, visas and accommodation for staff.
- C.** To create an independent investigating and reporting overseas staff responsible only to the charity trustees or directors; with respect to certain services, the charity may wish to cooperate with another reputable Canadian or international charity in order to avoid duplication of administrative costs.

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- D.** In selecting projects, to ensure that such undertakings are charitable in accordance with the law of charities as applied in Ontario, and that the charity's resources are applied exclusively for charitable purposes within its prescribed objects.
 - E.** If the charity works through local agencies or foreign government organizations, to formulate a detailed written agreement setting out the terms and nature of the arrangement and specifying that the Canadian charity will maintain control over the application of its funds and that its funds must be segregated and separately identified.
 - F.** To maintain, keep and preserve all books, records, receipts, disbursements, and other vouchers for accounting purposes, such accounts to be audited annually, preferably by a reputable international chartered accountancy firm, and to contain a separate and detailed breakdown of expenditures made in respect to the charitable activities performed abroad, with auditor's notes, where necessary, for further clarification.
 - G.** To avoid any political involvement for changes in local legislation, because such activities are not charitable in law and could result in the expulsion of the charity from the foreign territory, or worse, in the detention and imprisonment of its officers and employees.

On account of the appearance of fraudulent fund raisers who prey on the sensitivity of the public to such emotional issues as famine, natural disasters and extreme poverty, it is prudent for donors to satisfy concerns about the legitimacy of a charity, non-profit organization or fundraising before contributing: see the suggestions in "Concerned about the legitimacy of charities, non-profit organizations and fundraising?" in **Appendix L**.

Fundraising by or for Charities

- 6.15** Fundraising is not, of itself, a charitable purpose. It is, however, permissible as one of the incidental and ancillary powers of a charity. Where the fundraising activities of the charity become a purpose, or where the fundraising becomes a means of providing a livelihood for members or managers, serious concerns obviously arise as to whether the organization is, in fact, established and operating exclusively for purposes charitable in law. In a number of instances where fundraising has become a purpose of the organization, the Ontario Court (General Division) has appointed the Public Guardian and Trustee as trustee of the assets and operations of the charity and prohibited the individuals who managed the charity from further involvement in the administration,

management, solicitation, receipt or collection of funds or other property for charity.

It is important to note that, compared with the vast majority of properly operating charities, there is a relatively small number of unscrupulous individuals who abuse the public's confidence and trust by disguising their personal commercial interests under the cloak of charity. The mere knowledge of their potential existence, however, should make all of us vigilant and cautious when responding to a public appeal. As previously indicated, members of the public should satisfy their concerns about the legitimacy of a charity, non-profit organization or fundraising before contributing: see the suggestions in "Concerned about the legitimacy of charities, non-profit organizations and fundraising?" in **Appendix L**.

Although, at the present moment, there are no stringent controls, nor any prescribed codes of conduct or behaviour for a charity to adhere to when undertaking fund-raising activities, a charity engaging directly in fundraising should ensure that all marketing, advertising and public relations are conducted in a forthright and truthful manner. For instance, the charity, if requested, should disclose what proportion of each donation will be used to cover fundraising expenses. The charity, moreover, should be willing to make available a copy of its most recent audited financial statement to any potential donor. Incidentally, with respect to the preparation of the financial statements, the fundraising expenses should be segregated from the general administrative expenses, and both the gross and net fundraising receipts should be recorded in the income statement.

Charity trustees and directors should always research and carefully consider all the implications of their fundraising activities before deciding to embark on any particular method. In one case, a charity which embarked, immediately upon inception, on a grandiose national fundraising scheme through a professional consultant, saw the venture turn into a nightmare. For six years the charity applied all of its resources and energies defending itself in numerous expensive lawsuits. Preliminary research might have prevented this disastrous situation for the charity and its directors.

Charity trustees and directors who engage in direct fundraising, should also avoid the following pitfalls:

- A.** Engaging in fundraising which has previously attracted public criticism;
- B.** Embarking on a fund-raising method which requires a substantial initial financial outlay and which holds the prospect of success only if all conditions and factors are ideal, and

-
- C.** Employing aggressive or over-emotional fundraising methods, as such methods arouse public suspicion, resentment and mistrust.

If the charity trustees or directors decide to retain the services of a professional fundraising organization rather than undertake their fundraising directly through the charity's employees and volunteers, they should proceed cautiously. They must remember that professional fundraisers operate a business with profit being their primary motive. The charity may inquire of the Charities Division of Revenue Canada and the Charitable Property Division of the Public Guardian and Trustee, as well as the local Better Business Bureau, as to whether there have been any public complaints regarding the fundraiser's methods of solicitation and collection. The charity should also request that the professional fundraising organization provide the names of at least three charities for which it recently acted and the charity should contact these organizations for purposes of evaluating the services being offered.

Once the charity trustees or directors have decided to employ a certain professional fundraiser, it is advisable that a properly written contract be drafted by the charity's solicitor, which should make provisions for the following terms:

- A.** That the fundraiser, its employees and agents are prohibited from misleading the public by stating or implying, either in writing or verbally, that they are charity employees.
- B.** Under what circumstances the fundraiser may use the charity's name.
- C.** That the fundraiser, its employees and agents be required to disclose to the public on each and every solicitation, whether made verbally or in writing, that it is dealing with a professional fund raiser.
- D.** That the fund raiser be required to disclose what proportion of the monies subscribed will be retained by, or paid to, the professional fundraiser for its expenses, administrative costs and profits.
- E.** That the costs, expenses and profits of the fundraiser be kept within the 20 per cent proportion allowable by Revenue Canada for administration and non-charitable activities.
- F.** That all donations be paid directly into a special account in the charity's name and over which the charity has exclusive control.
- G.** That the charity have the right to inspect the premises and verify the methods of solicitation and collection being employed by the fundraiser

and be able to examine all the documents and financial records of the fund raiser relating to the fundraising, and

- H.** That the charity be empowered to terminate the contract if the fund raiser employs false or misleading solicitation practises.

If the charity trustees or directors intend to engage in any fundraising events which involve gaming, raffles, or lotteries, they should obtain the necessary licenses from the Gaming Control Commission of the Ministry of Consumer and Commercial Relations, 2nd Floor, 1099 Bay St., Toronto, Ontario M5S 2B3, 1-800-522-2876 or (416) 326-8700. Since the laws with respect to lotteries and gaming are complex and cannot be dealt with comprehensively in a publication such as this, charity trustees and directors are advised to consult directly with the Gaming Control Commission regarding appropriate registration, licensing and accounting requirements.

Charity directors and trustees should bear in mind that the good reputation and public respect for a charity may be one of its most important assets and that the charity and its directors and trustees may have legal liability for setting in motion or allowing improper fundraising practices or misuse of donations from the public.

Annuities

- 6.16** A few charities incorporated by private Acts of the Ontario legislature have the power to issue annuity contracts. On account of their existence, other charities may be approached by financial marketing companies with the proposal that the charity lend its name to such a fundraising venture. The charity may be given assurances that it will not incur any administrative costs or financial risk. Closer examination of these types of annuity agreements discloses serious concerns.

First, the term “insurance” is defined under the **Insurance Act** as, “to pay a sum of money upon the happening of a certain event . . .” The corresponding term “insurer” includes reference to any party who distributes or publishes any proposal in Ontario that makes or causes to be made any written or oral solicitation for insurance and deems such person to be carrying on business in Ontario within the meaning of that Act. Accordingly, it appears that a vendor (including a charity) of annuities in Ontario would come within the purview of the Act and therefore would be required to obtain a licence from the Superintendent of Insurance and comply with the requirements of that legislation, including maintenance and appropriate investment of adequate reserves for the liability for the annuities.

A charity, in order to apply for a licence, must be able to demonstrate that it has the corporate power to undertake such activities under its Letters Patent. Because the issuance of annuities is by law the operation of a business in the field of insurance, and such a business exposes the charity's assets to risk incurred other than for carrying out the charity's purposes, no such power clauses are permitted in Ontario Letters Patent for charities.

Secondly, the annuity agreement often stipulates that the charity is the annuity issuer, while the financial marketing company is only a trustee. These designations are obviously misleading. The charity cannot be an annuity issuer without the appropriate licence and corporate powers.

Thirdly, the annuity agreement usually provides that the annuity issuer will cause the trustee to pay required installments to the annuitants. Thus, if the financial marketing company becomes financially unable to continue the annuity payments, the charity, at least from the perspective of the annuitant, may be contractually liable to make the payments. Under these circumstances, a further question arises as to whether the charity trustees or directors who approved the contract would be personally liable, either to the annuitant or for exposing the charity's property to unjustifiable risk.

Fourthly, these agreements usually state that the financial company is entitled to deduct its fees and charges from the capital of the annuity. Such deductions may reduce considerably the capital value of the annuity and any ultimate payment to the charity in the future.

A charity which undertakes the issuance of annuities may not only be operating in contravention of insurance law, but may also be assuming substantial financial risks for questionable financial returns. Thus, charities not currently empowered to issue annuities should not concern themselves with this method of fundraising.

Although Revenue Canada does not prohibit the sale of annuities by charitable organizations, the registration of a charitable foundation may be revoked by the federal Minister of Revenue if the foundation undertakes to make annuity payments to donors.

Registration with Revenue Canada

6.17

6.17.1 Tax Advantages

Upon receipt of its Letters Patent, the charity may wish to seek registration as a charity under the federal **Income Tax Act**. The principal tax advantages to be derived by a charity registering under the **Income Tax Act** are two-fold:

1. The charity is exempt from tax on any income earned; and
2. The charity has the right to issue receipts for donations that entitle the donor to a tax credit.

6.17.2 How to Apply for Registration

To apply for registration, the charity must file with the Revenue Canada, Charities Division, 5th Floor, 400 Cumberland Street, Ottawa, Ontario K1A 0L5, the following information and documentation:

- A. A complete Application for Registration (Form T2050);
- B. A list of directors and officers or trustees of the charity;
- C. A certified copy of its Letters Patent and any Supplementary Letters Patent, or in the case of trusts or unincorporated charities, a copy of their governing document;
- D. A copy of its by-laws;
- E. A statement of its activities that reveal, in detail, how the charity intends to fulfill its objects and purposes;
- F. Any brochures or printed material that may be helpful in explaining the function and nature of the charity;
- G. If the charity has been operating prior to the date of its application to Revenue Canada, a copy of its financial statements, otherwise a budget or statement of its anticipated sources and uses of revenue for its first year of operation.

The application and explanatory brochure, “Registering Your Charity” (Form T4063.E), are available from any District Tax Office. See the blue pages of your telephone book for the office nearest you, or call Reference Canada at 1-800-667-3355.

To be registered as a charity under the federal **Income Tax Act**, the charity must ensure that all its resources will be devoted to charitable activities either carried on by the charity itself or by way of gifts made by it to other “registered charities.” No part of its income is payable to, or otherwise available for, the personal benefit of any director, trustee or member of the charity.

The Charities Division of Revenue Canada also is willing to review and comment on draft documentation to register a charity under the federal **Income Tax Act**. A statement of activities and the required information as indicated on Revenue Canada’s T2050 application form should accompany any such draft submission.

If all the documentation and information filed is acceptable to Revenue Canada, the applicants will receive written notification of the charity’s registration. The charity thereafter will be subject to a number of provisions and regulations under the federal **Income Tax Act**.

6.17.3 Charity Information Returns

Under the **Income Tax Act**, a “registered charity” means either a charitable organization, a private foundation or a public foundation. It is the responsibility of the directors and officers or trustees of the charity to familiarize themselves with all provisions and regulations applicable to charities and to ensure compliance therewith. By way of example, every “registered charity” must file within six months of the charity’s financial year end, without prior notice or demand, a Registered Charity Information Return (Form T3010). For further information on how to complete this return and the accompanying schedules, the charity should obtain a copy of “Guide to Charity Information Returns,” available from any District Taxation Office.

Failure to file these returns is cause to revoke the charity’s registration. Upon revocation of its registration, the charity loses its tax exemption on income, the right to issue official tax-credit receipts to donors and is subject to a revocation tax.

6.17.4 Interpretation Bulletins and Information Circulars

Revenue Canada publishes a series of interpretation bulletins and information circulars relating to charities, which, incidentally, are constantly being updated. Some of the bulletins and circulars that may be of interest to the reader are noted in the bibliography.

6.18 Bibliography of Suggested Reference Materials

A. Charities

Texts

Halsbury's Laws of England. 4th ed. Vol. 5. London: Butterworth's, 1974.

Keeton, G.W. and L.A. Sheridan. The Modern Law of Charities. 2nd ed. Belfast: Northern Ireland Legal Quarterly, 1971.

Maurice, Spencer G. and David B. Parker. Tudor on Charities. 7th ed. London: Sweet and Maxwell, 1984.

Picarda, Hubert. The Law and Practice Relating to Charities. 2nd ed. London: Butterworth's, 1995.

Waters, Donovan W. M. Law of Trusts in Canada. 2nd ed. Chapter 14: "Charitable Trusts." Toronto: Carswell, 1984.

Canadian Bar Association - Ontario Continuing Legal Education:

"The Charitable Mosaic," September 27, 1983.

"The Law of Groups," November 1, 1985.

"Non-Share Capital Corporations," October 17, 1986.

"Non-Share Capital Corporations - A Guide to Securing Letters Patent," April 19, 1991.

"Charity and Not-for-Profit Law - The Emerging Speciality," May 15, 1997.

The Canadian Encyclopaedic Digest. 3rd ed. Title 24: "Charities," 1984.

Law Society of Upper Canada - Continuing Legal Education:

"Fundamentals of Non-Profit Organizations," June 13, 1995.

Carter, T.C., "Advising the Charitable Client: Proactive Risk Management Advise" in Special Lectures 1996.

Estates - Planning, Administration and Litigation, March 28-29, 1996

Periodicals

The Philanthropist/Le Philanthrope. Toronto: The Agora Foundation.

Reports

Report of the Charity Commissioners for England and Wales. London: Her Majesty's Stationery Office, annually since 1960.

Ontario Law Reform Commission. Report on the Law of Charities. Toronto: Ministry of the Attorney General, 1996, 2 volumes.

B. Income Tax Matters and Charities

Revenue Canada publications.

Interpretation Bulletins

IT-110R2	"Deductible Gifts and Official Donation Receipts"
IT-111R	"Annuities Purchased from Charitable Organizations"
IT-226R	"Gifts of Residual Interest to a Charity"
IT-244R3	"Gifts of Life Insurance Policies as Charitable Donations"
IT-288R	"Gifts of Capital Property to a Charity and Others"
IT-297R2	"Gifts in Kind to a Charity and Others"

Information Circulars

IC-75-23	"Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools"
IC-77-6	"Registered Charities: Designation as Associated Charities"
IC-78-10R	"Books and Records Retention/Destruction"
IC-80-10R	"Operating a Registered Charity"
IC-84-3R3	"Gifts in Right of Canada"
IC-87-1	"Registered Charities - Ancillary and Incidental Political Activities"

Drache, Arthur B. C. Canadian Taxation of Charities and Donations. Don Mills: Richard De Boo Publishers, 1987.

C. Trusts and Fiduciaries

Texts

Keeton, George W. The Law of Trusts. London: Professional Books, 1974.

Law Society of Upper Canada - Continuing Legal Education:
"Executors and Trustees," November 1985.

"Fiduciary Duties - A Matter of Trust," November 1986.

Lewin, Thomas. Trusts. 16th ed. London: Sweet and Maxwell, 1964.

Scott, Austin W. The Law of Trusts. 4th ed. Boston: Little, Brown, 1987.

Underhill, Sir Arthur. Law Relating to Trusts and Trustees. 13th ed. London: Butterworth's, 1979.

Waters, Donovan W. M. Law of Trusts in Canada. 2nd ed. Toronto: Carswell, 1984.

Periodicals

Deadbeat, Toronto: CBAO Trusts and Estates Section.

Estates and Trusts Quarterly, Toronto: Carswell.

Estates and Trust Reports. Scarborough: Carswell Legal Publications.

Reports

Ontario Law Reform Commission. Report on the Law of Trusts. Toronto: Ministry of the Attorney General, 1984, 2 volumes.

APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT
SHARE CAPITAL
REQUÊTE EN CONSTITUTION D'UNE PERSONNE MORALE SANS
CAPITAL ACTIONS

[illegible]

25 Windermere Avenue, Suite 205,
City of Toronto

(Street & No., or R.R. No., or Lot & Concession No., or Lot & Plan No., Post Office Box No. not acceptable; if Multi-Office Building give Room No.)

(Rue et numéro, ou R.R. et numéro de lot et de concession, ou numéro de lot et de plan; numéro de boîte postale inacceptable: s'il s'agit d'un édifice à bureaux, numéro du bureau)

Municipality of Metropolitan Toronto

M	6	J	3	L	9
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(Name of Municipality)
(Nom de la municipalité)

(Postal Code/Code Postal)

3. The applicants who are to be the first directors of the corporation are:
Requérants appelés à devenir les premiers administrateurs de la personne morale:

Name in full, including all first, middle names
Nom et prénoms au complet

Residence address, giving Street & No., or R.R., No. or Lot & Concession No., or Lot & Plan No., and Postal Code (Post Office Box No. not acceptable)
Adresse personnelle y compris la rue et le numéro ou la R.R. et le numéro, ou le numéro de lot et de concession, ou Le numéro de lot et de plan, ainsi que le code postal (Numéro de boîte postale inacceptable)

Roslie, Geraldine

20 Southport Street, Apt. 902
Toronto, Ontario M6J 3M7

Galluci, Donna

55 Ormskirk Court
Toronto, Ontario M6J 4X6

Quaife, Petra

47 Palmer Road
Belleville, Ontario K8P 4C6

4. The objects for which the corporation is incorporated are:
Objets pour lesquels la personne morale est constituée:

To provide supportive services for shut-ins and the disabled such as personal care, housekeeping, meals-on-wheels, nursing and shopping assistance.

5. The special provisions are/Dispositions particulières:

The corporation shall be carried on without the purpose of gain for its members, and any profits or other accretions to the corporation shall be used in promoting its objects.

La personne morale doit exercer ses activités sans rechercher de gain pécuniaire pour ses membres, et tout bénéfice ou tout accroissement de l'actif de la personne morale doit être utilisé pour promouvoir ses objets.

A. The corporation shall be subject to the *Charities Accounting Act* and the *Charitable Gifts Act*.

B. The directors shall serve as such without remuneration and no directors shall directly or indirectly receive any profit from their positions as such, provided that directors may be paid reasonable expenses incurred by them in the performance of their duties.

C. The borrowing power of the corporation pursuant to any by-law passed and confirmed in accordance with section 59 of the *Corporations Act* shall be limited to borrowing money for current operating expenses, provided that the borrowing power of the corporation shall not be so limited if it borrows on the security of real or personal property.

D. Upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Ontario.

E. If it is made to appear to the satisfaction of the Minister, upon report of the Public Guardian and Trustee, that the corporation has failed to comply with any of the provisions of the *Charities Accounting Act* or the *Charitable Gifts Act*, the Minister may authorize an inquiry for the purpose of determining whether or not there is sufficient cause for the Lieutenant Governor to make an order under subsection 317(1) of the *Corporations Act* to cancel the Letters Patent of the corporation and declare them to be dissolved.

F. For the above objects, and as incidental and ancillary thereto, to exercise any of the powers as prescribed by the *Corporations Act*, or by any other statutes or laws from time to time applicable, except where such power is contrary to the statutes or common law relating to charities, and in particular, without limiting the generality of the foregoing:

POWER TO ACCUMULATE.

(1) To accumulate from time to time part of the fund or funds of the corporation and income therefrom subject to any statutes or laws from time to time applicable;

POWER TO INVEST.

(2) To invest the funds of the corporation in such manner as the Directors may determine in those investments authorized by law for Trustees;

POWER TO SOLICIT DONATIONS AND GRANTS.

(3) To solicit and receive donations, bequests, legacies and grants, and to enter into agreements, contracts and undertakings incidental thereto;

POWER TO RECEIVE PERSONAL PROPERTY.

(4) To acquire by purchase, contract, donation, legacy, gift, grant, bequest or otherwise, any personal property and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, dispose of and convey the same, or any part thereof, as may be considered advisable;

POWER TO HOLD AND DISPOSE OF REAL PROPERTY.

(5) To acquire by purchase, lease, devise, gift or otherwise, real property, and to hold such real property or interest therein necessary for the actual use and occupation of the corporation or for carrying on its charitable undertaking, and, when no longer so necessary, to sell, dispose of and convey the same or any part thereof;

POWER TO HIRE.

(6) To employ and pay such assistants, clerks, agents, representatives and employees, and to procure, equip and maintain such offices and other facilities and to incur such reasonable expenses, as may be necessary, provided that the corporation shall not pay any remuneration to a Director in any capacity whatsoever; and provided that all of the foregoing is subject to sections 23 and 61 of the *Trustee Act* and any order of the court;

POWER TO COOPERATE WITH ANY OTHER CHARITABLE ORGANIZATIONS.

(7) To cooperate, liaise, and contract with other charitable organizations, institutions or agencies which carry on similar objects to that of the corporation;

POWER TO PARTICIPATE IN THE REORGANIZATION OF A COMPANY.

(8) To take up proportions of any increased capital of a company or corporation in which the corporation may at any time hold shares or obligations; to purchase any additional shares or obligations in such company or corporation; to join in any plan for the reconstruction or reorganization or for the sale of assets of any company or corporation; or part thereof; to enter into any pooling or other agreement in connection with the shares or obligations of a company or corporation held by the corporation; and to give consent to the creation of any mortgage, lien or indebtedness of any company or corporation whose shares or obligations are held by the corporation; provided, however, that all of the foregoing is subject to the provisions of the *Charitable Gifts Act*;

POWER TO SUE AND COMPROMISE CLAIMS.

(9) To demand and compel payment of all sums of money and claims to any real or personal property in which the Corporation may have an interest and to compromise any such claims, and generally to sue and be sued in its corporate name;

POWER TO ISSUE CHEQUES.

(10) To draw, make, accept, endorse, execute and issue cheques and other negotiable or transferable instruments;

POWER TO PAY COSTS OF INCORPORATION.

(11) To pay all costs and expenses of, or incidental to, the incorporation;

RESTRICTION ON POWERS (1).

H. Provided that it shall not be lawful for the corporation directly or indirectly to transact or undertake any business within the meaning of the *Loan and Trust Corporations Act*.

RESTRICTION ON POWERS (2).

I. Provided further that the corporation shall not have the capacity of a natural person.

6. The names and residence addresses of the applicants:
 Nom et prénoms et adresse personnelle des requérants:

Name in full, including all first, middle names Nom et prénoms au complet	Residence address, giving Street & No., or R.R., No. or Lot & Concession No., or Lot & Plan No., and Postal Code (Post Office Box No. not acceptable) Adresse personnelle y compris la rue et le numéro ou la R.R. et le numéro, ou le numéro de lot et de concession, ou le numéro de lot et de plan, ainsi que le code postal (Numéro de boîte postale inacceptable)
Roslief, Geraldine	20 Southport Street, Apt. 902 Toronto, Ontario M6J 3M7
Galluci, Donna	55 Ormskirk Court Toronto, Ontario M6J 4X6
Quaife, Petra	47 Palmer Road Belleville, Ontario K8P 4C6

This application is executed in duplicate.

La présente requête est faite en double exemplaire.

Signatures of applicants/Signature des requérants

APPENDIX "B"

Addresses of Corporation Branches in Other Canadian Jurisdictions

ALBERTA	General Inquiry.....(403) 427-2311 Registrar of Corporations Corporate Registry 10365 - 97 Street, Mezzanine Level Edmonton, Alberta T5J 3W7
BRITISH COLUMBIA	General Inquiry.....(250) 387-7848 Registrar of Companies Corporate and Personal Property Registries Ministry of Finance & Corporate Relations 940 Blanshard Street Victoria, British Columbia V8W 3E6
*Mailing address	P.O. Box 9431 Station Provincial Government Victoria, British Columbia V8W 9V3
CANADA	General Inquiry.....(819) 997-1142 Director Corporations Branch Consumer and Corporate Affairs Canada Phase 11 - 11th Floor 50 Victoria Street Place du Portage OTTAWA/HULL K1A 0C9
MANITOBA	General Inquiry / Name Reservation(204) 945-2500 Director Companies Office Department of Consumer & Corporate Affairs 1010 Woodsworth Building 405 Broadway Winnipeg, Manitoba R3C 3L6

**New
Brunswick**

General Inquiry.....(506) 453-2703

Director
Corporate Affairs
Department of Justice
Centennial Building, Room 475
670 King Street
P.O. Box 6000
Fredericton, New Brunswick
E3B 5H1

**Newfoundland
and Labrador**

General Inquiry.....(709) 729-3317

Registrar of Deeds & Companies
Government of Newfoundland & Labrador
Department of Government Services
P.O. Box 8700
Confederation Building
St. John's, Newfoundland
A1B 4J6

N.W.T.

General Inquiry.....(403) 873-7492

Registrar of Companies
Department of Justice
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, N.W.T.
X1A 2L9

Nova Scotia

General Inquiry.....(902) 424-7770

Registrar of Joint Stock Companies
Department of the Attorney General
1660 Hollis Street
Centennial Building
P.O. Box 1529
Halifax, Nova Scotia
B3J 2Y4

P.E.I.

General Inquiry.....(902) 368-4550

Director of Corporations
Corporations Division
Department of Community Affairs & Attorney General
Shaw Building
95 Rochford Street
P.O. Box 2000
Charlottetown, P.E.I.
C1A 7N8

Quebec**General Inquiry.....(418) 643-3625**

Directeur
Direction des Entreprises
Inspecteur General des Institutions Financieres
800, Place d'Youville
6ieme etage
Quebec, Quebec
G1R 4Y5

Saskatchewan**General Inquiry.....(306) 787-2962**

Director
Corporations Branch
Department of Justice
2nd Floor, 1871 Smith Street
Regina, Saskatchewan
S4P 3V7

Yukon**General Inquiry.....(403) 667-5442**

Registrar of Corporations
Department of Justice
Box 2703
Whitehorse, Yukon
Y1A 2C6

APPENDIX "C"

Search Houses

Search houses are private business enterprises; they are **NOT** connected with or sponsored by the Ontario government. Search houses have, through a business arrangement, access to the NUANS* computer data base of corporate name, trade marks and business names in use in Canada. The fees charged and services provided vary from search house to search house. Accordingly, it is wise to shop around.

The search house you select will produce a computer printed name search report in duplicate. As a service to their customers, search houses usually highlight the names of any existing corporations, sole proprietorships and partnerships as well as trade marks that might conflict with the proposed name. (You should bear in mind however, that the selection of the name is the responsibility of the incorporator.)

Search houses are listed in the yellow pages of the local telephone directory under "**Searchers of Records**".

*(NUANS, New Upgraded Automated Name Search System, is owned by the Corporations Branch of Industry Canada).

APPENDIX "D"

Draft Standard Objects Clauses for Non-Profit Non-Charitable Corporations under Part III of the Corporations Act

Athletics and Sports

- A.**
- 1. Aquatics:** The establishment and operation of an aquatics club for the purposes of
- a) promoting interest in aquatic games, sports and recreation;
 - b) arranging matches and competitions, and establishing and granting prizes, awards and distinctions;
- and such other complementary purposes not inconsistent with these objects.
- 2. Athletics Clubs:** The establishment and operation of an athletics club for the purposes of
- a) promoting organized athletics sports, games and recreation, and in particular, _____;
 - b) arranging matches and competitions, and establishing and granting prizes, awards and distinctions;
 - c) fostering goodwill and sportsmanship;
- and such other complementary purposes not inconsistent with these objects.
- 3. Curling:** The establishment and operation of a curling club for the purposes of
- a) promoting the sport of curling;
 - b) providing facilities for curling;
- and such other complementary purposes not inconsistent with these objects.
- 4. Fishing and Hunting (Rod and Reel) Club:** The establishment and operation of a hunting and fishing (rod and reel) club for the purposes of
- a) encouraging organized sport fishing;
 - b) encouraging organized gunmanship;
 - c) promoting better knowledge of safe handling and proper care of

-
- firearms;
 - d) promoting the study of local fish and game potential and their conservation;
 - e) promoting the principles of good sportsmanship;

and such other complementary purposes not inconsistent with these objects.

5. Flying: The establishment and operation of a flying club for the purposes of

- a) promoting interest in flying and aviation;
- b) teaching and training of persons in the art and science of aviation and the operation of aircraft;

and such other complementary purposes not inconsistent with these objects.

6. Golf: The establishment and operation of a golf, country, sporting and social club for the purposes of

- a) promoting interest and participation in the sport of golfing;
- b) arranging tournaments and competitions, and establishing and granting prizes, awards and distinctions;
- c) providing dining, meeting, changing, and equipment rooms and other facilities for members and their guests;

and such other complementary purposes not inconsistent with these objects.

7. Health Club: The establishment and operation of a health and fitness club for the purposes of

- a) promoting interest in health and physical fitness;
- b) providing exercise equipment, changing and meeting rooms and other facilities for members and their guests;

and such other complementary purposes not inconsistent with these objects.

8. Hockey: The establishment and operation of a hockey club for the purposes of

- a) promoting interest in amateur hockey;
- b) arranging matches and competitions, and establishing and granting prizes, awards and distinctions;

and such other complementary purposes not inconsistent with these objects.

9. Riding: The establishment and operation of a riding club for the purposes of

- a) fostering interest in horsemanship;
- b) encouraging breeding and showing of horses (and, particularly, the sponsorship of an annual exhibition and horse show at _____);
- c) encouraging matches and competitions between various breeds of horses;
- d) promoting the good qualities and merits of various breeds of horses;

and such other complementary purposes not inconsistent with these objects.

10. Skating: The establishment and operation of a skating club for the purposes of

- a) promoting figure skating;
- b) arranging for instruction, displays and exhibits of figure skating skills;
- c) arranging matches and competitions and establishing and granting prizes, awards and distinctions;

and such other complementary purposes not inconsistent with these objects.

11. Snowmobiling: The establishment and operation of a snowmobile club for the purposes of

- a) promoting safe snowmobiling;
- b) arranging for instruction, displays and exhibits of snowmobiling skills;
- c) arranging matches and competitions and establishing and granting prizes, awards and distinctions;

and such other complementary purposes not inconsistent with these objects.

12. Swimming: The establishment and operation of a swimming club for the purposes of

- a) promoting aquatic sports;
- b) providing opportunities and training for self-development, leadership and sportsmanship in the field of aquatic activities;
- c) arranging matches and competitions, and establishing and granting prizes, awards and distinctions;

and such other complimentary purposes not inconsistent with these objects.

13. Yachting: The establishment and operation of a yacht club for the purposes of

- a) developing and fostering the sport of yachting;
- b) encouraging the development of seamanship through yachting and the knowledge of navigation;

and such other complementary purposes not inconsistent with these objects.

14. Other

Arts

B. 1. Dance: The establishment and operation of dance festivals for the purposes of promoting ballet dancing and the allied arts and public appreciation and interest therein, and such other complementary purposes not inconsistent with these objects.

2. Literary: The establishment and operation of a literary society for the purposes of

- a) encouraging creative writing in all forms;
- b) establishing and granting prizes, awards and distinctions;

and such other complementary purposes not inconsistent with these objects.

3. Music: The establishment and operation of a music society for the purposes of

- a) promoting interest in and the study and practice of the musical arts;
- b) promoting lectures, concerts, classes and seminars in music and music-related activities;
- c) arranging competitions and exhibitions, and establishing and granting prizes, awards and distinctions;

and such other complementary purposes not inconsistent with these objects.

4. Photography: The establishment and operation of a photography club for the purposes of studying and promoting the science of photography, and such other complementary purposes not inconsistent with these objects.

5. Theatre: The establishment and operation of dramatic theatre for the purposes of

- a) promoting interest in and the practice of drama and the related arts;
- b) establishing and operating a theatre and repertory group;
- c) providing facilities for education and instruction in the theatrical arts;
- d) advancing knowledge and appreciation of dramatic culture and tradition by theatrical performances;
- e) conducting annual theatrical festivals;

and such other complementary purposes not inconsistent with these objects.

6. **Other:**

Business / Professional Groups

C. 1. Businessmen / Women: The establishment and operation of a businessmen/women's club for the purposes of promoting fellowship among people in business in the (sector/location), and such other complementary purposes not inconsistent with these objects.

2. Employees: The establishment and operation of an employees' association for the purposes of

- a) promoting the interests and well-being of the employees of _____;
- b) organizing cultural, educational and recreational events for the benefit of the members;
- c) providing for the welfare of the employees and former employees of _____ and their dependants, by grants of money, pensions and insurance;

and such other complementary purposes not inconsistent with these objects.

3. Merchants' Association: The establishment and operation of a merchants' association for the purposes of

- a) attracting customers to (define locale) and creating an atmosphere which will encourage customers to return;
- b) promoting and encouraging fair and courteous dealings with customers;
- c) promoting and encouraging ethical business practices;

and such other complementary purposes not inconsistent with these objects.

4. Professional Association: The establishment and operation of a (specify) professional association for the purposes of

- a) uniting members of the (specify) profession and protecting the

-
- character and status of the profession, promoting ethical practice, settling questions of professional usage and courtesy among members of the profession;
- b) maintaining and improving the qualifications and standards of the profession;
 - c) sharing information for the mutual benefit of the members;

and such other complementary purposes not inconsistent with these objects.

5. Trade Association: The establishment and operation of a (type of trade) association for the purposes of

- a) promoting and protecting the interests and conserving the rights of those engaged in the (trade) and incidental businesses;
- b) ensuring uniformity in usage, custom and trade conditions;
- c) protecting the business interests of the members;
- d) providing business information and statistics of interest to business persons in the (trade);
- e) maintaining and improving the qualifications and standards of the (trade);

and such other complementary purposes not inconsistent with these objects.

6. Other:

Community

D. 1. Community Association: The establishment and maintenance of a community organization for the purposes of

- a) developing and fostering community spirit;
- b) promoting organized athletics, arts, recreation, education, civic emergency, social service and other community endeavours;
- c) establishing and maintaining a community home;
- d) promoting adult educational, recreational and athletic facilities and equipment for benefit to the community;

and such other complementary purposes not inconsistent with these objects.

2. Community Centre: The establishment and operation of a community centre for the purposes of

- a) promoting the best interests of the community generally;
- b) promoting interest in athletics, sports and recreation in the community

and establishing and maintaining physical facilities and equipment for same;

and such other complementary purposes not inconsistent with these objects.

3. Community Club: The establishment and operation of a community club for the purposes of

- a) promoting and fostering community spirit and engaging in work of a moral, benevolent and community service nature for the residents of _____;
- b) organizing cultural and recreational events;

and such other complementary purposes not inconsistent with these objects.

4. Conservation: The establishment and operation of a conservation association for the purposes of

- a) uniting all persons interested in the conservation of flora and fauna, the natural beauties of (locale) and the beautification, preservation and extension of parks and green belts;
- b) gathering and exchanging ideas, data and statistical, scientific, horticultural and botanical information;
- c) assuring protection and enhancing appreciation of the ecology of the natural environment;

and such other complementary purposes not inconsistent with these objects.

5. Ethnic: The establishment and operation of a club for the purposes of

- a) uniting the residents of Ontario who are of _____ origin;
- b) preserving and perpetuating the traditions of _____;
- c) sponsoring literary, musical and other educational and cultural events, festivals, pageants and conventions for the promotion of people of _____ descent;
- d) promoting interests of members and mutual aid and assistance whenever necessary;
- e) establishing and maintaining a centre for cultural activities for Canadians of _____ descent in the Province of Ontario;

and such other complementary purposes not inconsistent with these objects.

6. Fraternity / Sorority: The establishment and operation of a fraternity/sorority for the purposes of

-
- a) promoting the mutual interests of its members;
 - b) establishing and operating a house for its members with all the usual accommodation and conveniences of a club and providing suitable quarters and entertainment for its members and their friends;

and such other complementary purposes not inconsistent with these objects.

7. Historical: The establishment and operation of a historical society for the purposes of

- a) promoting public interest in the history, of (place) and to encourage research therein;
- b) conducting and promoting historical and archaeological research;
- c) maintaining a library and museum;

and such other complementary purposes not inconsistent with these objects.

8. Home and School Association: The establishment and operation of a home and school association for the purposes of

- a) promoting the study of child problems, for the creation and development of the best conditions for the training of boys and girls;
- b) uniting parents of school children and teachers of such children attending schools in _____;
- c) co-operating with school boards and other home and school associations;
- d) providing to school boards, boards of education and the Ministry of Education and Training progressive measures and helping make public opinion favourable to reform and advancement of such matters;

and such other complementary purposes not inconsistent with these objects.

9. Lobbying: The establishment and operation of a public lobbying organization for the purposes of

- a) securing public support in Canada for the enactment/repeal of legislation by the government dealing with _____;
- b) making representations to the government for the enactment/repeal of such legislation;
- c) rendering assistance to the government by supplying information collected as result of research carried on under the auspices of the corporation;
- d) co-ordinating activities of the corporation with those of similar organizations, societies and individuals in Canada;

and such other complementary purposes not inconsistent with these objects.

10. Research / Scientific: The establishment and operations of a research/scientific association for the purposes of

- a) undertaking technical, statistical and scientific research in commercial, industrial, cultural and scientific fields;
- b) engaging in the investigation and development of products, methods of manufacturing and distribution;
- c) promoting the science of _____ and the knowledge and practice thereof;
- d) holding conferences, meetings and exhibitions for the discussion of _____ problems and exchange of views thereon;
- e) establishing scientific projects;
- f) establishing a library or collection of books or other publications dealing with _____;
- g) establishing and maintaining suitable quarters and facilities for the corporation to further its objects;

and such other complementary purposes not inconsistent with these objects.

11. Residents: The establishment and operation of a residents' association for the purposes of

- a) advancing the cultural and social interests of the seasonal and permanent owners and residents of properties in and around _____ in the province of Ontario;
- b) carrying on research and investigation into problems connected with the ownership, development, management, financing and promotion of real property in _____;
- c) promoting aquatic, athletic, physical and other social and cultural activities among the residents of the said area;
- d) opening and maintaining private roadways for the exclusive use of members and their guests;

and such other complementary purposes not inconsistent with these objects.

12. Service Club: The establishment and operation of a service club for the purposes of

- a) pursuing interests in the civic, commercial, social and moral welfare of the community;
- b) providing a forum for the discussion of all matters of public interest;
- c) promoting and fostering interests in the welfare of the World and

-
- international relationships;
 - d) promoting the principles of good government and good citizenship;
 - e) uniting persons interested in the bonds of friendship, good fellowship and mutual understanding;
 - f) encouraging and carrying on social and welfare work;
 - g) improving and promoting good business and professional ethics;

and such other complementary purposes not inconsistent with these objects.

13. Social Club: The establishment and operation of a social club for the purposes of

- a) providing facilities for the pleasure and accommodation of members and guests;
- b) organizing social and cultural events;

and such other complementary purposes not inconsistent with these objects.

14. Social Service Organization: The establishment and operation of a social service organization for the purposes of engaging in and encouraging social and juvenile welfare work, and such other complementary purposes not inconsistent with these objects.

15. Women's Affairs: The establishment and operation of a women's affairs organization for the purposes of

- a) promoting the interests of women in all aspects of daily life;
- b) providing a forum for the discussion of public issues affecting women;

and such other complementary purposes not inconsistent with these objects.

16. Other:

Based on *Canada Corporation Manual*, "Capacity-Powers" (Form IV.5), Kingston and Grover (eds.), Richard De Boo, Toronto.

and

O'Brien's Encyclopaedia of Forms, "Corporations" (Vol. 5), Weinberg (ed.), Part IV, Ch 24, Canada Law Book, 10th edition, Toronto. 1975.

APPENDIX "E"

Consent and Undertaking Certified Copy of a Resolution

Appendix "E"

Consent and Undertaking
CERTIFIED COPY OF A RESOLUTION

BE IT RESOLVED THAT

(a) _____
(name of one of the applicants)

and others are authorized to apply for incorporation as a
corporation without share capital under the name of

(name of corporation to be incorporated)

(b) The _____
(name of the unincorporated organization)

undertakes to discontinue the use of its unincorporated name
within six months of incorporation of the new corporation.

(signature)

I HEREBY CERTIFY this to be a true copy of the resolution of the members of

(name of unincorporated organization)

duly passed at a meeting of the said organization on _____
(date)

DATED _____

(Signature)
Secretary

APPENDIX "F"

NOTICE OF SPECIAL RESOLUTION CHANGING THE NUMBER OF DIRECTORS MAY BE IN THE FOLLOWING FORM:

Appendix "F"

Notice of Special Resolution Changing the Number of
Directors may be in the Following Form:

Re: (Name of Corporation) Ontario Corporation No

Notice is hereby given that the number of directors of (name of
corporation) was (increased)(decreased) from to by a
special resolution which was confirmed by the members of the corporation
on .
 (date)

Dated .

Secretary (Signature) .

Notice of such special resolution, signed manually by an officer or a
director, must be

- 1) filed with the Companies Branch, Ministry of Consumer
and Commercial Relations, and
- 2) published in the Ontario Gazette,

by the corporation within fourteen days after the resolution has been
confirmed by the members.

To facilitate the microfilming of the notice please file on white paper,
Approximately 210mm x 297mm (8 ½" x 11") with a margin of 30mm
(1 1/4") on the left-hand side.

The notice of such special resolution which is published in the Ontario
Gazette should be mailed directly to the Queen's Printer, 880 Bay St.
5th Floor, Toronto, Ontario, M7A 1N8.

APPENDIX "G"

NOTICE OF SPECIAL RESOLUTION CHANGING THE LOCATION OF THE HEAD OFFICE MAY BE IN THE FOLLOWING FORM:

Appendix "G"

NOTICE OF SPECIAL RESOLUTION CHANGING THE LOCATION OF THE HEAD OFFICE MAY BE IN THE FOLLOWING FORM:

Re: (Name of Corporation) Ontario Corporation No. _____

Notice is hereby given that the location of the Head Office of (name of corporation) was changed from (name of municipality) to (name of municipality) by a special resolution which was confirmed by the members of the corporation on _____.
(date)

Dated: _____

Secretary (Signature) .

Notice of such special resolution, signed manually by an officer or a director, must be

- 1) filed with the Companies Branch, Ministry of Consumer and Commercial Relations, and
- 2) published in the Ontario Gazette,

by the corporation within fourteen days after the resolution has been confirmed by the members.

To facilitate the microfilming of the notice please file on white paper approximately 210mm x 297mm (8 1/2" x 11") with a margin of 30mm (1 1/4") on the left-hand side.

The notice of such special resolution which is published in the Ontario Gazette should be mailed directly to Ontario Gazette, 880 Bay Street, 5th Floor, Toronto, Ontario, M7A 1N8.

APPENDIX "H"

Reporting Requirements for the Office of the Public Trustee

Charities and others receiving or holding property for charitable purposes are required to provide information to the Public Guardian and Trustee under sections 1 and 2 of the **Charities Accounting Act**, R.S.O. 1990, c. C.10 as amended. This requirement is distinct from other reporting obligations, for example to Revenue Canada under the federal **Income Tax Act**.

This information is used to monitor compliance with charities law and to identify charities that may be candidates to receive funds and property of defunct charities, charitable gifts to named charities that cannot be identified, and charitable gifts not designated to be given to any named charity.

Donors and others considering providing funding frequently ask of the Public Guardian and Trustee whether a charity is in compliance with the **Charities Accounting Act**.

The general reporting requirements under the **Charities Accounting Act** are detailed below. Please review these requirements carefully and retain this Notice as a reference for future reporting.

Please provide the currently required documentation and information - items 1(a), 2(a), 3 (a), and 4 - immediately. For the future, please provide the required documentation and information - items 1(b), 2(b), 3(b) and 4 - when required without further request.

General Reporting Requirements

1. **a)** A copy of the document establishing or governing the charity or charitable fund (e.g. corporate charter, trust, will, constitution) and of each document that has made any change thereto.
 b) For the future, a copy of all documents making or recording further changes, as those changes occur.
2. The street and mailing addresses of the charity or charitable fund, and the names and the street and mailing addresses of its trustees, directors and officers.
 - a)** for each of its last three financial years (or since its establishment, if established less than three years ago), and
 - b)** for the future, as this information changes.

-
- 3.** All legal and popular or common names or acronyms by which the charity or charitable fund:
- a)** has been or is known or identified, and
 - b)** in the future, becomes known or identified.
- 4.** The registration number assigned by Revenue Canada for charitable donation tax-credit purposes. Please advise if a registration number has not been assigned, or has been or subsequently is revoked, and provide an explanation.

Please mail or fax required information to:

Office of the Public Guardian and Trustee
Charitable Property Division
595 Bay Street, Suite 800
Toronto ON M5G 2M6

Fax: (416) 326-1969

APPENDIX "I"

DRAFT OBJECT CLAUSES FOR INCORPORATED CHARITIES

As part of section 4 of the application for Letter Patent

1. RELIGIOUS ORGANIZATIONS

- (a)** To preach, promote and advance the spiritual teachings of the (specify faith) by practising the religious observances, tenets and doctrines associated with that faith.
- (b)** To support and maintain missions and missionaries in order to propagate the faith.

The following should be included in section 5 of the application:

For the purposes aforesaid, and as incidental and ancillary thereto:

- (i)** To acquire and hold land for the purposes of a place of worship, residence for its religious leader, a burial ground or cemetery, a theological seminary or similar institution of religious instruction.
- (ii)** To operate a printing or publishing office in order to print, publish and distribute religious books, magazines, papers and other religious literature directly related to the charitable objects.

2. DISEASE RESEARCH SOCIETY

- (a)** To undertake public education, family support services, dissemination and publication of information about (specify disease), and to coordinate medical care and social services for persons suffering from (specify disease).
- (b)** To promote and provide funds for research into the cause, control and cure of (specify disease).

3. COMMUNITY CENTRES

To establish and operate a community centre in (specify city, town, etc.), providing workshops, programs, athletics, drama, art, music, handicrafts, hobbies and recreation for the benefit of the general public.

4. COMMUNITY HEALTH CENTRE

To operate a community health centre in (specify city, town, etc.), by providing medical, health and supportive services to the general community with specific emphasis on the needs of the elderly and handicapped.

5. COMMUNITY ORCHESTRA OR BAND

- (a)** To establish, operate, maintain, equip and direct a community orchestra or band in (specify city, town etc.).
- (b)** To provide for the holding of public concerts, exhibitions and educational forums in music.

6. CRIME STOPPERS ORGANIZATIONS

- (a)** To educate and create public awareness in the prevention of crime, protection of persons and property by conducting seminars, conferences and neighbourhood programs on crime prevention.
- (b)** To promote and develop a high standard of cooperation between the public and police by encouraging information dissemination to solve crime and to detect and prevent the commission of crimes.

The following should be included in section 5 of the application.

- (i)** Ancillary and incidental to the above objects, to offer monetary rewards for information relating to the commission of a crime, such rewards to be given on the recommendation of the police force.

7. DAY NURSERIES AND "DAY CARE CENTRES"

- (a)** To establish, maintain and operate a non-profit nursery school (or day care centre) or physically, emotionally, developmentally or financially disadvantaged children within the community.

-or-

- (a)** To establish, maintain and operate a day nursery (or day care centre) in conjunction with the following charitable organization [please specify the name of the charitable organization].

-or-

- (a)** To establish, maintain and conduct a non-profit day nursery (or day care centre) licensed under the **Day Nurseries Act** for the education, including care and guidance, of children.

OPTIONAL SUPPLEMENTARY OBJECTS

- (b)** To initiate, develop and conduct non-profit child care programs, seminars, and conferences available to the community at large and directed specifically towards parents, "child carers," teachers and other persons having care or custody of children.
- (c)** To offer on site training, practice and experience to students of child care educational programs.
- (d)** To liaise with other charitable, educational or governmental agencies or organizations in developing child care programs.

8. ENVIRONMENTAL PROTECTION ORGANIZATIONS

- (a)** To preserve, protect, restore and improve the natural resources and environment of (specify region).
- (b)** To encourage and foster an understanding and awareness of the natural resources and environment and their value in enhancing our quality of life, by offering conferences, seminars, public meetings and distribution of information circulars on issues relating to the environment and its protection.
- (c)** To conduct educational seminars, conferences and public fora about the flora, fauna, hydrology and geology of the region.

9. HERITAGE PRESERVATION SOCIETIES

To preserve our historical heritage by providing educational programs to increase the public's awareness of the usefulness of our historical buildings and structures.

-or-

To maintain and preserve historical buildings and to keep such buildings open to viewing by the public.

10. HOME CARE FOR THE DISABLED AND SHUT-INS

To provide supportive services for shut-ins and the disabled such as personal care, housekeeping, meals-on-wheels, nursing and shopping assistance.

11. HOMES FOR THE DEVELOPMENTALLY HANDICAPPED

- (a)** To provide a community based residential facility, a school based treatment program and an after care program for persons with emotional, intellectual or developmental handicaps.

-or-

-
- (a)** To provide non-profit residential housing and a stable living environment for the developmentally handicapped.
 - (b)** To provide life management counselling and other supportive services in order to make the developmentally handicapped more independent in the community.
 - (c)** To provide training and assistance in the placement of the handicapped in gainful employment.
 - (d)** To liaise with other charitable, non-profit community and governmental agencies or organizations in the creation of recreational, educational and social integration programs for the developmentally handicapped.

12. RESIDENCES FOR YOUNG OFFENDERS

- (a)** To provide residences for young persons who have been sentenced to a term of open custody by the courts and to provide them with the opportunity to effect a successful reintegration into society through involvement in programs such as life skills training, educational upgrading, employment preparation, personal health care/hygiene, creative use of leisure and recreational time, drug and alcohol counselling and/or treatment, and other specialized programs as necessary.
- (b)** To develop and promote better community understanding of young offenders with a view to encouraging community participation in the reintegration of young persons as productive members of society.

13. HOSPITALS

- (a)** To establish, equip, staff, maintain and operate a public hospital, including without limiting the generality of the foregoing, an active treatment department, chronically ill facility, community health centre, out patients' department, rehabilitation and physiotherapy department and elderly persons' residence.
- (b)** To operate and maintain a laboratory, research facility, pharmacy or dispensary.
- (c)** To promote and participate in all phases of education pertaining to health care, including specifically the education of physicians, dentists, nursing staff and paramedical personnel.

14. IMMIGRANT AND COMMUNITY SUPPORT SERVICES

To provide educational and counselling services for needy immigrants, in English, or French, and in their native language, through programs of language instruction and employment training.

15. LOW COST HOUSING

To provide and operate non-profit residential accommodation and incidental facilities thereto exclusively for persons of low income or senior citizens or the disabled.

16. DEVELOPMENTALLY HANDICAPPED ASSOCIATIONS

- (a) To promote, support and encourage persons with intellectual and developmental handicaps by offering programs in individual development and integration into their communities.
- (b) To encourage and support medical and scientific research and study into the causes of mental retardation with a view to developing means of prevention, treatment, and rehabilitation.
- (c) To development and promote better community understanding of the handicapped with a view to encouraging respect for the rights and dignity of persons with intellectual and developmental handicaps.
- (d) To develop and implement family enrichment programs with specific regard to the needs of the individual handicapped person.

17. PERFORMING ARTS ORGANIZATIONS

To educate and promote the public's appreciation of the aesthetic arts by providing theatrical performances in public parks, senior citizens homes, churches, community centres and educational institutions.

18. PREVENTION AND TREATMENT OF SEXUALLY ABUSED CHILDREN ORGANIZATIONS

- (a) To educate the public, professionals, parents and other persons having custody or care of children on how to prevent and develop more effective responses to child sexual abuse by offering courses, seminars, conferences, meetings, telephone networking, collection and dissemination of information and referral to services.
- (b) To assist families in coping with the aftermath of child sexual abuse by offering counselling and treatment programs.
- (c) To educate children on how to recognize acts of child sexual abuse and how to respond to such acts.

19. RELIEF OF POVERTY ORGANIZATIONS

- (a) To relieve poverty in (specify the region or country) by assisting in the indigenous development efforts of the community in the fields of health, transportation, communications, water treatment, energy supply and agriculture.
- (b) To promote the health of the community by educating and instructing the

public on prevention of and curative measures to more common health problems and by researching and documenting changes in the health of the community.

- (c) To improve the quality of the drinking water in (specify the region or country).
- (d) To improve basic skills in afforestation, agronomy, horticulture and encourage the preservation the environment in (specify the region or country).

20. SCHOLARSHIP FOUNDATIONS/EDUCATIONAL FOUNDATIONS

- (a) To receive and maintain a fund or funds and to apply all or part thereof and the income therefrom for charitable purposes of an educational nature, and in particular, to provide scholarships, fellowships, bursaries, prizes and financial assistance to students of elementary schools and secondary schools, with emphasis on students, who, without financial assistance, might not otherwise be able to continue their education, and to provide equipment, furnishings, teaching aids, and supplies to educational institutions in Canada and to educational institutions outside Canada who are also registered charities under the provisions of the **Income Tax Act** (Canada), with preference to educational institutions which provide remedial education to students with perceptual handicaps and learning disabilities.
- (b) To carry on educational programs in order to promote the knowledge respecting reaching methods, teaching skills and teaching aids through research, education and publication and distribution of books, papers, reports, periodicals, and pamphlets, and to provide funds to charitable organizations which carry on such educational programs.

21. RETRAINING AND EMPLOYMENT CENTRES

- (a) To establish, maintain and operate a non-profit community employment and training centre for the unemployed.
- (b) To provide counselling and educational programs in drafting a curriculum vitae in searching for employment and in preparing for job interviews.
- (c) To provide counselling and supportive services to persons experiencing long-term unemployment.
- (d) To liaise with other charitable, non-profit community and governmental agencies and organizations in developing retraining and educational programs for the unemployed.
- (e) To develop and implement employment training programs for sole supporting parents who are preparing to re-enter the job market, after a long-term absence.

22. SENIOR CITIZENS CENTRES

To establish, operate and maintain residential accommodation exclusively for senior citizens who are either physically incapacitated, developmentally handicapped or financially disadvantaged.

23. SENIOR CITIZENS RESIDENCES

To establish, operate and maintain residential accommodation exclusively for senior citizens who are either physically incapacitated, developmentally handicapped or financially disadvantaged.

24. UNITED WAY "TYPE" ORGANIZATIONS

- (a)** To receive and maintain funds and other property and to apply all or part thereof and the income therefrom for charitable purposes and to charitable organizations within the area served by (specify geographical area).
- (b)** To increase the efficiency of charitable organizations and the effectiveness of their work by providing advice and support services in the form of volunteers, internal management, operational and administrative programs.

The following should be included in section 5 of the application.

For the purposes aforesaid, and as incidental and ancillary thereto:

- (i)** To foster cooperation among local, provincial and federal governmental agencies serving the community.
- (ii)** To encourage and promote voluntarism in the community through systemic communications and educational programs.

25. FOUNDATIONS

To receive and maintain a fund or funds and to apply all or part of the principal and income therefore, from time to time, for charitable purposes, and in particular for the following charitable purposes: (list specific charitable activities to be support or undertaken).

-or-

To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the **Income Tax Act** (Canada).

NOTE: In support of a foundation type application, applicants should identify the source of the funds to establish the foundation and of the donors.

26. BLOCK PARENT PROGRAM

- (a)** To promote and develop safety on the streets of the community for all citizens by organizing a block parent program wherein block parents will place a sign in a window of their residences or places of business which will indicate that a person is available to help people who are in need of assistance.
- (b)** To educate and create a public awareness in the prevention of crime, protection of persons and property by conducting seminars, conferences and neighbourhood programs on crime prevention.

27. WASTE REDUCTION AND RECYCLING

- (a)** To promote the reduction, re-use recycling and recovery of waste generated by the (specific community).
- (b)** To educate and encourage institutions, industries, business and individuals in the community to develop efficient methods of waste management.
- (c)** To carry on research relating to waste management and to document and disseminate such information to the public, industries and government in order to encourage the reduction of waste and the promotion of recycling.

28. BIG BROTHER/BIG SISTER "TYPE" ORGANIZATIONS

To provide for the care, upbringing and establishment in life of (specify: male or female) children and young persons of single parent families by matching them with a mature (specify: male or female) adult, referred to as a (specify: "Big Brother" or "Big Sister"), under the supervision of the Board of Directors.

29. RESIDENCE FOR ADULT OFFENDERS (COMMUNITY RESOURCE CENTRES)

- (a)** To provide an opportunity for adult offenders on temporary absence, parole, or probation, to effect a successful reintegration into society with the assistance of a community based residential environment, and through involvement in programs such as life skills training, education, upgrading, employment preparation, personal health care/hygiene, creative use of recreation and leisure time, drug and alcohol treatment, and other specialized areas as necessary.
- (b)** To develop and promote better community understanding of correctional residents with a view to encouraging community participation in the reintegration of offenders as productive members of society.

30. HEAD INJURY GROUPS

- (a)** To organize, co-ordinate and direct medical support service programs for brain-injured persons.

-
- (b) To promote and support public research in the field of brain injury related issues.

31. SUBSTANCE ABUSE TYPE GROUPS

- (a) To provide public information about substance abuse.
- (b) To conduct public research and provide funds for research into the causes and treatments for substance abuse.
- (c) To co-ordinate medical care and social support services for substance abuse clients and their families.
- (d) To assist families in coping with substance abuse and its aftermath.
- (e) To provide a treatment and recovery facility at which substance abuse clients may reside and to provide medical and social support services at the facility.

32. FOOD BANK CHARITIES

To operate and maintain a food bank to provide foodstuffs to needy people in (specify region).

33. MISSIONS TO SEAMEN

To promote the spiritual and moral wellbeing of seafarers visiting the Port of (specify), by offering pastoral care and guidance without distinction of race, creed or nationality.

34. PHOENIX HOUSES (SEXUAL ASSAULT CENTRES)

- (a) To provide affordable and secure, short-term non-profit housing exclusively for women and their children who have been emotionally, physically or sexually traumatized by domestic violence.
- (b) To provide on-site support services to such women and their children including child day care, life skills programs, and group counselling with a view to assist such women to exercise self-determination.

APPENDIX “J”

Standard Special Provisions Required in a Charity's Letters Patent

As part of section 5 of the application

- (A)** The corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its objects.

NOTE: The above provision is now preprinted onto Letters Patent application forms.

- (B)** The corporation shall be subject to the **Charities Accounting Act** and the **Charitable Gifts Act**.
- (C)** The directors shall serve as such without remuneration and no director shall directly or indirectly receive any profit from their positions as such, provided that directors may be paid reasonable expenses incurred by them in the performance of their duties.
- (D)** The borrowing power of the corporation pursuant to any by-law passed and confirmed in accordance with section 59 of the **Corporations Act** shall be limited to borrowing money for current operating expenses, provided that the borrowing power of the corporation shall not be so limited if it borrows on the security of real or personal property.
- (E)** If it is made to appear to the satisfaction of the Minister, upon report of the Public Guardian and Trustee, that the corporation has failed to comply with any of the provisions of the **Charities Accounting Act** or the **Charitable Gifts Act**, the Minister may authorize an inquiry for the purpose of determining whether or not there is sufficient cause for the Lieutenant Governor to make an order under subsection 317(1) of the **Corporations Act** to cancel the Letters Patent of the corporation and declare them to be dissolved.
- (F)** Either: Upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Ontario.
- Or: Upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Canada.
- Or: Upon the dissolution of the corporation and after payment of all debts and liabilities, its remaining property shall be distributed or disposed of to (specify: *registered charities* or *qualified donees*) under the **Income Tax Act** (Canada) that are charitable organizations which carry on their work solely in (specify: *Ontario* or *Canada*).

APPENDIX "K"

Incidental and Ancillary Powers

As part of section 5 of the application

Preface to all Power Clauses:

- G.** For the above objects, and as incidental and ancillary thereto, to exercise any of the powers as prescribed by the **Corporations Act**, or by any other statutes or laws from time to time applicable, except where such power is contrary to the statutes or common law relating to charities, and in particular, without limiting the generality of the foregoing:

Power to Accumulate

- (i)** To accumulate from time to time part of the fund or funds of the corporation and income therefrom subject to any statutes or laws from time to time applicable;

Power to Invest

- (ii)** Either: To invest the funds of the corporation in such manner as the Directors may determine in those investments authorized by law for Trustees;
- Or: To invest and reinvest the funds of the corporation in such manner as determined by the Directors, and in making such investments, the Directors shall not be limited to investments authorized by law for Trustees, provided such investments are reasonable, prudent and sagacious under the circumstances and do not constitute, either directly or indirectly, a conflict of interest;

Power to Solicit Donations and Grants

- (iii)** To solicit and receive donations, bequests, legacies and grants, and to enter into agreements, contracts and undertakings incidental thereto;

Power to Receive Personal Property

- (iv)** To acquire by purchase, contract, donation, legacy, gift, grant, bequest or otherwise, any personal property and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, dispose of and convey the same, or any part thereof, as may be considered advisable;

Power to Hold and Dispose of Real Property

- (v) To acquire by purchase, lease, devise, gift or otherwise, real property, and to hold such real property or interest therein necessary for the actual use and occupation of the corporation or for carrying on its charitable undertaking, and, when no longer so necessary, to sell, dispose of and convey the same or any part thereof;

Power to Hire

- (vi) Either: To employ and pay such assistants, clerks, agents, representatives and employees, and to procure, equip and maintain such offices and other facilities and to incur such reasonable expenses, as may be necessary, provided that the corporation shall not pay any remuneration to a Director in any capacity whatsoever;
- Or: To employ and pay such assistants, clerks, agents, representatives and employees, and to procure, equip and maintain such offices and other facilities and to incur such reasonable expenses, as may be necessary, provided that the corporation shall not pay any remuneration to a Director in any capacity whatsoever; and provided that all of the foregoing is subject to sections 23 and 61 of the **Trustee Act** and any order of the court;

Power to Cooperate with any Other Charitable Organizations

- (vii) To cooperate, liaise, and contract with other charitable organizations, institutions or agencies which carry on similar objects to that of the corporation;

Power to Participate in the Reorganization of a Company

- (viii) To take up proportions of any increased capital of a company or corporation in which the corporation may at any time hold shares or obligations; to purchase any additional shares or obligations in such company or corporation; to join in any plan for the reconstruction or reorganization or for the sale of assets of any company or corporation, or part thereof; to enter into any pooling or other agreement in connection with the shares or obligations of a company or corporation held by the corporation; and to give consent to the creation of any mortgage, lien or indebtedness of any company or corporation whose shares or obligations are held by the corporation; provided, however, that all of the foregoing is subject to the provisions of the **Charitable Gifts Act**;

Power to Sue and Compromise Claims

- (ix) To demand and compel payment of all sums of money and claims to any real or personal property in which the corporation may have an interest and to compromise any such claims, and generally to sue and be sued in its corporate name;

Power to Issue Cheques

- (x)** To draw, make, accept, endorse, execute and issue cheques and other negotiable or transferable instruments;

Power to Pay Costs of Incorporation

- (xi)** To pay all costs and expenses of, or incidental to, the incorporation.

Restriction on Powers

- H.** Provided that it shall not be lawful for the corporation directly or indirectly to transact or undertake any business within the meaning of the **Loan and Trust Corporations Act**.
- I.** Provided further that the corporation shall not have the capacity of a natural person.

APPENDIX "L"

Concerned about the legitimacy of charities, non-profit organizations and fundraising?

The demands to support charities and non-profit organizations are many. Some requests are legitimate but others are not.

If you are concerned about the legitimacy of a charity, non-profit organization or fundraising, satisfy your concerns **before** you make a contribution.

Ask

Questions. You are not wasting a canvasser's or telephone solicitor's time. A legitimate organization will spend the time with you.

Ask

For the canvasser's or telephone solicitor's name, whether they are employed by a professional fundraiser and the name and address of the professional fundraiser.

Ask

About the charity or non-profit organization. Where is it located? What is its address and telephone number? What does it do and where does it operate or carry on business? Who sits on its board of directors? When was it established and how long has it been operating?

Ask

Where the money is going. What percentage of the contribution will actually be received by the charity or non-profit organization?

Ask

If your contribution can be claimed for an income tax donation credit. If so, what is the organization's Revenue Canada registration number.

Check

What you're told by the canvasser or telephone solicitor with the charity or non-profit organization.

Check

If the organization is registered with Revenue Canada (1-800-267-2384) and its registration number.

Check

The canvassing organization's reputation and the reputation of the charity or non-profit organization with the Better Business Bureau.

Check

If the organization is on file with the Office of the Public Guardian and Trustee (in the Greater Toronto Area (416) 326-1963, outside GTA 1-800-366-0335, ext 6-1963).

Doubts?

Ask the canvasser or telephone solicitor to put the request in writing, or call you in several days. You can then make inquiries and make a decision.

When In Doubt, Check It Out.

Remember

It's *your* money.

APPENDIX "M"

Contacts:

Office of the Public Guardian and Trustee
Charitable Property Division
595 Bay Street, Suite 800
Toronto, Ontario
M5G 2M6

Telephone (416) 314-2800 or (416) 326-1963
or toll free 1-800-366-0335

Websites:

english:<http://www.gov.on.ca/ATG/english/pgt/pgthome.htm>
french:<http://www.gov.on.ca/ATg/french/pgt/pgthome.htm>

Ministry of Consumer and Commercial Relations
Companies Branch
393 University Avenue, Suite 200
Toronto, Ontario
M5G 2M2

Telephone (416) 314-8880
or toll free 1-800-361-3223

Industry Canada
Corporations Directorate
Jean Edmonds Tower South
365 Laurier Avenue West, 9th Floor
Ottawa, Ontario
K1A 0C8

Telephone (613) 941-9042

Ministry of Consumer and Commercial Relations
Gaming Control Commission
1099 Bay Street, 2nd Floor
Toronto, Ontario
M5S 2B3

Telephone (416) 326-8700
or toll free 1-800-522-2876

Revenue Canada
Charities Division
400 Cumberland Street, 5th Floor
Ottawa, Ontario
K1A 0L5

Toll free 1-800-267-2384

Revenue Canada District Tax Offices in Ontario are located in:

Belleville, Hamilton, Kingston, Kitchener, London, Mississauga, North
York, Ottawa, Peterborough, St. Catharines, Scarborough, Thunder Bay,
Toronto and Windsor

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